THE BISHOP OF VVaterfords Case WITH THE MAYOR and SHERIFFS OF WATERFORD,

Stated and Vindicated.

By a Diligent Enquirer into the true Grounds and Reasons thereof.

TOGETHER

With a clear Asserting the Rights of Episcopal Jurisdiction, according to the Constitution thereof, by His MAJESTIES Laws, both Ecclesiastical, and Temporal.

Ne quid falsum audeam; Ne quid veri non audeam.

My Lord *Coke's* Rule given to all such as take upon them to write: Jurisdiction of Courts, cap. 9.

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that neither the ſame, nor any ſuch like break out any more.

I cannot be thought ſo little acquainted with the ways and diſpoſitions of men in this age, but that I muſt know my ſelf hereby expoſed to the ill-will, and perhaps to the ill-language of many: But if this be the humour, may they enjoy it, that love it, there ſhall be nothing to feed it, contributed by me; whoſe reſolve it is not to make a return of either ill-will, or ill-language back again, If the aſſerting a very conſiderable truth, and backing it with the beſt reaſon and authority I could, muſt make me a Sufferer in this kind; it is a condition, I ſhall not at all deprecate the being in, nor in the leaſt repine at.

It is poſſible that ſome expreſſions may ſeem too tart, and galling, and ſo prove diſtaſteful to thoſe that think themſelves concerned therein; but know, that nothing is here delivered with a ſatyrical or reproaching intention, the Author had truth in his eye and aim: Not a deſign to gratifie any party, or vilifie any mans perſon, much leſs to detract from the rights and authority of any ſubordinate Magiſtrate; only ſome ſuch expreſſions as have been, were thought neceſſary to be uſed; like a few corroſive mixtures in applications to ſuch Sores, which otherwiſe would have a palliative, inſtead of a through and ſound Cure,

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THE BISHOP of WATERFORD'S CASE WITH THE MAYOR and SHERIFFS OF WATERFORD,

Stated and Vindicated, &c.

THE late Proceedings at **Waterford**, betwixt the *Bishop*, and the *Mayor* and *Sheriffs* of that City, making a great Noise abroad, and furnishing Discourse for most Companies that met together; I made it awhile my business, to enquire into the true state thereof; the better to discover, if I could, what proportion the Matter it self held with the Talk made, and

Cenſures paſſed by Men thereon: While I was thus employed, I could not chooſe but obſerve, That there was ſtill retained too much of the old Malignity of ſpirit; and how readily ſome perſons catched at any occaſion, to inveigh againſt *Biſhops*, and traduce both their *Order*, and *Juriſdiction*. Moreover, That they who were moſt loud and clamorous againſt the *Biſhop* of **Waterford**'s proceedings in this **Caſe**, were indeed ſuch as leaſt underſtood the true Grounds and Reaſons thereof; inſomuch, as when they have vented their Clamors with greateſt eagerneſs, they have been known for all that, to ask, **What it was that the Biſhop did?** Whereas they who had attained ſome competent knowledge therein, were more moderate and reſerved.

Hereupon I judged, That this Enquiry would be ſeaſonable, becauſe I might thereby be able to give my ſelf ſatisfaction about it, and, peradventure, be inſtrumental to the undeceiving the unwary and eaſily ſeduced; or, convincing the wilfully erring perſons therein: This, I think, will be no difficult Task to perform; if Men will but once be brought to think that they may miſtake, or that they may

may be too much byaſſed with prejudices; and, thereupon, reſolve to act like what they would be thought to be, ingenuous and rational Men. In proſecuting of this Deſign, I propoſe two things as the principal Subjects of this Enquiry; The one is, **concerning the matter of Fact**; The other is, **concerning the matter of Right** in theſe proceedings.

Concerning the matter of Fact, my entrance into that ſhall be, by premiſing a paſſage or two, relating to the preceding, and to this preſent *Biſhop*; which may inform us what manner of welcome both were ſaluted withall, at their firſt coming to **Waterford**.

When at His MAJESTIES Happy Reſtauration, the late *Biſhop* firſt came thither, the graver and better Sort gave him a chearful Entertainment; but, a perverſe Generation, very prevalent in that City, treated him at a far different rate; I think, no Uſages could be more barbarous and rude, than he experienced there: Frequent Affronts were offered him, **Libels** ſpread abroad of him, **Papers of Queries** ſent and tendred to him; ſuch, as were full of ridiculous Non-ſenſe, yet full of Petulancy and Malice.

The induſtry and travel of that *Pious Prelate*, to reduce to, and ſettle that People in their Duty and Obedience to Gods Church, and Gods Anointed; His Aſſiduity in Preaching; His Exemplarineſs of Living, are ſufficiently known to all: The baſe ſlighting of which, will (I fear) lie heavy one day on the Conſciences of ſome Men.

When this *Prelate* was one time about to diſcharge two ſolemn Offices, the one of *Preaching*, he found his **Pulpit, fouly defiled with Excrements** (ſo as muſt not be named) and the other Office of *Baptiſing*, the **Font was defiled in the like beaſtly and unſeemly manner.** Theſe, and many other unkind and ungrateful Uſages, contributed not a little to the ſhortning of his life; and (God forgive me if I judge uncharitably) the ſame, I think, have been continued, to work the like effect on his Succeſſor; and, peradventure, they would be more encreaſed, if they could but accompliſh the Eradication of the whole Order, together with the extinction of both their perſons.

The worthy *Prelate*, now in the See of **Waterford**, at his Entrance thereinto, having firſt inſpected the ſtate of his Dioceſs at large,

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and ſet in order the Affairs thereof. His next care employed him about the Cathedral Church of **Waterford**, where too he met with the like barbarous welcome that his Predeceſſor had done before; for ſhortly after his firſt coming to **Waterford**, going to Solemn Prayers at the Cathedral, attended with many of his Clergy, he found the way that he muſt walk, from the Body of the Church into the Choire towards the Biſhops Throne, **moſt beaſtly defiled with Excrements again:** But not diſcouraged herewith, the Repairing, Beautifying, and Adorning of that Church, is that which he is ſeriouſly intent upon; ſo as that in a ſhort time, he brought the Choire thereof (at no little Expence and Charge of his own) to that comely and graceful Uniformity that it is now to be ſeen in; ſuch, as may at once delight and awe the Beholders, ſo well attemper'd together are ſome innocent and pleaſing Ornaments, with the more ſolemn and grave Furniture added thereto; for which, he received ſhortly after, the Thanks of a **ſcurrilous Libel.**

The Body of that Cathedral, together with ſome Out-Chappels adjoining thereto, the Tower

Tower and Bells do by Ancient *Charter-party* belong to the Corporation of **Waterford**, to keep in good and decent Repair: In lieu of which, the ſaid Corporation of **Waterford**, have the diſpoſing of all Burying places therein, and receive to their own uſe ſuch Emoluments and Profits as do accrue thereby: And, as I have been Credibly informed from a knowing perſon, that has inſpected the Ancient Records of that City, the Corporation became Enfeoffed in certain Lands, beſtowed for theſe purpoſes, namely, **To maintain a Publick School-maſter**; And, **To uphold in good and conſtant Repair, the Body of the Cathedral, Out-Chappels, Tower and Bells**, as is before mentioned.

The *Biſhop* being Religiouſly zealous in proſecuting this good Work which he had begun, intimates to the *Mayor*, and reſt of the Corporation of **Waterford**, the Duty belonging to them in behalf of the Church; he is very inſtant, and preſſing with them, that what in Duty they were obliged to do, they would with Alacrity and Chearfulneſs enter upon: But, Excitements to Acts of Devotion, and ſuch pious Works as this, find but cold

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Entertainment in these dayes of languishing Piety and Charity: And so truly they did with these Men, They alledging their present Poverty, and exhausted Revenue, whereby they were rendred unable to undertake so chargeable a work: Nay, there wanted not some, who gave it out openly enough, That the proceeding in such a Design, was, if not unnecessary, yet then unseasonable: And that if it must be done, **the Clergy,** who had got an ample Revenue in the City, were the fittest to effect the same.

Notwithstanding these little Shiftings and Tergiversations used by these Men, the *Bishop* is not discouraged yet in his Religious endeavours; but persisting still in his purpose, what by entreaties and perswasions, his own good example, and other rational motives, he at last prevails with them. Hereupon, both to ease the Charge of the Corporation in some measure, and to forward the Work, Voluntary Subscriptions are gathered from many persons, as well Strangers, as others, Citizens of **Waterford,** for the new Casting and Hanging a Ring of Bells, the *Bishop* himself subscribing very liberally and bountifully thereto; and from his particular Friends, procuring many

ny other conſiderable Subſcriptions, which Subſcriptions, as I have heard, came to near *One hundred pounds*. To this was added, By the *Mayor* and *City-Council*, a great Tax or Rate (which, together with the Subſcriptions, might make in all *Two hundred and ſeven pounds*, or thereabouts) and by them Levied upon the Inhabitants of the City. I diſpute not how juſtifiable the making and Levying this Tax was, nor why that which ought to have come from the Chamber and Publick Revenue of the City, was to be ſupplied by a perſonal Tax upon the People; whether this was done to make good their former Allegation of Poverty, or whether this was done to ſave the City-ſtock, I take not upon me to determine; perhaps it was for both theſe ends, and perhaps it was for one more (like the Actings of a wiſe and politick People) namely, to reflect the *Odium* thereof from the querulous Inhabitants upon the Biſhop, as if by his forcible impulſe and inſtigation, they were neceſſitated to this extraordinary courſe: But while theſe things were thus carrying on, one remarkable matter intervened, well worthy here to be inſerted and taken notice of.

When

When the Bells in their metal were to be ſent to **Briſtol** for the New-caſting of them, and (as I have before touched) Subſcriptions had been made by many perſons both of that City, and ſuch as were ſtrangers for the very purpoſe of New-caſting, and Hanging of the Bells; yet ſuch were the ſordid and penurious Deſigns of the chief Leaders of Affairs in **Waterford**, whether to intervert the money deſigned for that, to ſome other purpoſe, or to ſave their own ſlender proportions concerned therein, the *Mayor* that then was, that is, he that was *Mayor* in the Year *One thouſand ſix hundred ſixty and ſeven*: This perſon, the *Mayor* (I ſay) **dealt under-hand** with one **Aram** (in whoſe Ship the Bells were to be carried over) to this purpoſe; **That he ſhould reſerve a certain quantity of the metal, which would in value be ſufficient to defray the Charges of Caſting the reſt; and the remainder to be made uſe of for ſuch a Ring of Bells as had been there afore time, which** (was ſaid) **would ſerve the turn well enough**: For this we are to know, that beſides the metal of five Bells that were taken out of the Tower of the Cathedral of

Waterford, the Bishop had added seven Bells more, that had been retrieved out of the hands of some private persons, who in the late times of Confusion and Demolishment, had secured them in their own possession.

This **pretty thrifty Project**, the said **Aram** acquaints the Bishop withall, and shews him the then *Mayors* instructions under his hand, and desires the Bishops advice and direction what to do therein: The Bishop hereupon sends to the *Mayor*, desires his company, speaks with him, urged to him the baseness and unworthiness of the thing he had given direction for, brought the *Mayor* to a sudden abashment and confusion; and so altered quite, and prevented the Design of defraying the Charge of Casting the Bells, by withholding a great part of their own metal. And over and above that, spoiled their Plot, of their **being Gainers of Two hundred pound and upward** (*viz.* by the Subscriptions and Tax before mentioned) which in likelihood would have passed current, if this **holy Cheat** had not been discovered; for this is to be further observed, That besides the voluntary Subscriptions before spoken of, the great Tax that I said was laid on the people of

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Waterford, was pretended to be Subſidiary, and as a Supplement to the Subſcriptions for the Bells; ſo as the Deficiencies of theſe might be made up by the help of the other.

And this very thing was then pretended, when this unworthy Deſign was in agitation, and ready to be put in execution. This **Aram** is now dead; nevertheleſs, there is a competent Witneſs, a perſon of good Credit yet remaining alive, who ſaw the Paper of Inſtructions that was given by the *Mayor*, and was preſent when it was delivered to the Biſhop, and heard the Biſhops Expoſtulation with the *Mayor* about the ſame.

Such then was the ſtate that the Church buſineſs was in on the City part: when *Michaelmas* comes leading to the Year *One thouſand ſix hundred ſixty and eight* (*Michaelmas* is the time for the New Elected Mayor and Sheriffs to be Sworn, and take their place) much was expected from this New Mayor, as having profeſſed to bear a Filial reſpect and obedience to the Church: And truly there wanted not plenty of good promiſes, and ſome plauſible overtures from him; but very little in the Church-concerns was done. Much

noiſe and out-cry there was about the money levied and collected; That Workmen were not paid; That ſome Materials belonging to the Work were not ſatisfied for; That what money was collected, was not diſtributed, as was intended. I know not how grounded they were, but ſome Suſpitions were conceived, ſome whiſpering Rumors paſſed abroad, that inſtead of this money being diſpoſed to a Publick uſe, it went into private Pockets. And if it were ſo, it was ſaid, That would not have been the firſt inſtance of that kind in **Waterford.**

Hereupon the Biſhop, in order to conſult with the *Mayor* and *Sheriffs*, deſires them to give him a meeting, that as they had undertaken the raiſing, receiving and diſpoſing the money levied and collected for the Church and the Bells, ſo they might give an account what was become of it, and how diſpoſed of: For, know, that the charge of Caſting the Bells, and providing Clappers, Ropes, and all other things requiſite about them, as they came from *Briſtol*, amounted but to One hundred and ſixteen pound one ſhilling and ſix pence; a Sum, much leſs than what the Rate and Subſcriptions made: But about this time, while

while theſe things were thus diſcuſſing, the ſaid Mayor told a Perſon of good Quality, That as for giving an Account to the Biſhop, he would be content to do it, in caſe he were deſired thereto in a friendly manner; but otherwiſe he would not, becauſe as he was Mayor, ſo he was not ſubject to the Biſhops Juriſdiction.

Well, notwithſtanding that he was thus (as he termed it, and it was ſo indeed) in a friendly manner deſired again thus to do; yet neither he, nor the two Sheriffs did give the Biſhop a meeting as was deſired of them; whereupon the Biſhop orders a Proceſs to iſſue out, and Convents them before him in the Conſiſtory; They refuſe to appear, though being duly Summoned, and ſo run into Contempt. Being called again, and then appearing, they were for their former Contempt enjoined an eaſie Penance; They aggravate their former, with this new Contempt in diſobeying the Biſhops Injunction, and thereupon are mildly Cenſured by the Biſhop; Not **Excommunicated**, as was falſely rumor'd and mouth'd abroad by Men that regarded not what proceeded from them, whether

whether Truth or Falſhood, ſo it might but ſerve their purpoſes; but large intermiſſions of time there were betwixt every of theſe Proceedings, as will be ſhewed hereafter: And thus ſtands **the matter of Fact** in this whole Tranſaction.

Upon a Reflection now made on this whole matter in one Review, Will not the **Carriage** of theſe perſons appear of a ſtrange form and kind, to any ſober and indifferent Man? Hardly, I think, will it be parallel'd by Preſident of any ſuch that has formerly been; Hardly be entertained with Credit, that any ſuch had lately been. And the whole Proceeding being ſo as is here briefly declared, Let the **Perſons concerned herein**, be ſo ingenuous, as freely to confeſs and acknowledge the ſame. If yet this be denied (ſo may the trueſt Narrative of things be, and yet have never the leſs of Truth in it for all that) yet there is ſo much, and ſo clear Evidence to Verifie what has been ſet down, That if any Attempt be made of ſtanding to ſuch a Denial, then an eaſie producing of this Evidence, will both ſhame thoſe Deniers, and add to the Confirmation of the Truth

Truth hereof. Howbeit, ſome particularities in ſeveral paſſages of this Proceeding, may find in the following Sections a more ſeaſonable Diſcovery and Enlargement. In the mean time, the Queſtion *de Jure*, falls in to be diſcuſſed, concerning the juſtifiableneſs of the Biſhops proceedings herein.

Three main Exceptions I find much inſiſted upon, and urged againſt theſe Proceedings.

The firſt is, in relation to the Perſons thus Convented and Cenſured; for they being the Mayor and Sheriffs of a City under His Majeſties Government, and repreſenting His Perſon; it is ſaid, That thereupon they became exempt from any Epiſcopal Juriſdiction.

The ſecond Exception is, in relation to the Cauſe they were called in queſtion upon; for that is affirmed not to be of Eccleſiaſtical, but Civil cognizance, becauſe ſaid to be grounded on a real Contract betwixt the Corporation and the Church; and ſo the holding Plea, and judging of Contracts, belongs not to the Conſiſtory, but to the Temporal Courts.

The third Exception is, in relation to the manner of Proceedings, which are affirmed to have been precipitous and hasty, without such form and regularity as ought to be observed therein, and therefore illegal and unjustifiable.

To these three Exceptions, I shall oppose and endeavour to make good these three following Propositions, which will both invalidate any force that might be in the Exceptions, and likewise assert and make good the Legality of what was done herein.

I. Prop. The Bishops Jurisdiction in the Case before mentioned, was Legally founded in respect of the Persons proceeded against.

II. Prop. The Bishops Jurisdiction over these persons, was Legally founded, in respect of the Cause proceeded upon.

III. Prop. The Bishops Jurisdiction was Legally managed in this Cause against these Persons, in respect of the manner observed in the proceedings thereof.

I. Prop.

I. *Prop.* The first Propoſition, The Biſhops Juriſdiction in the caſe before mentioned (was legally founded in reſpect of the Perſons proceeded againſt) To make this good, is that, which I am firſt obliged to endeavour. And I do it thus, by laying my foundation in this received Maxime concerning Spiritual juriſdictions; That in all matters and cauſes of Eccleſiaſtical cognizances, all Perſons within any Dioceſs regularly and *de jure communi*, are ſubject to the juriſdiction of the Biſhop of that Dioceſs: The original proceeding of which inſtitution (I mean as to the actual Exerciſe of ſuch juriſdiction) depends upon, and derives principally from the bounty and munificence of Chriſtian Emperors and Princes. As for juriſdiction meerly ſpiritual convei'd in, and at the time of Conſecration, inhærent in every Biſhop, as he is ſuch, I here ſpeak not of, otherwiſe than as it is the foundation and ground from which this Actual exerciſe does ariſe, and has the enlargements made to it, both ſubjectively in reſpect of perſons made ſubordinate thereto; and objectively in reſpect of matters and cauſes appropriated to it.

Sundry inſtances making this Aſſertion good, might be had in the Imperial Law: But ſo it will appear to be, to him that will but conſult, *Titulum de Epiſcopali judicio in Codice Theodoſiano, Et Titulum de Epiſcopali Audientia in Codice Juſtinaneo. Et leg. omni innovatione ceſſante. leg. Privilegia ibidem de Sacro, Sanctis Eccleſiis*: whence *Tholoſanus Syntagmat. lib.* 47. *de diviſione judicii num.* 12. 13. Infers this rule, *Prelati ſunt ordinarii Judices Rerum & Perſonarum ſuæ juriſdictionis*: And moreover adds this, *Cæſares tuentur & defendunt ſacerdotale judicium.*

um, & Privilegia ejus legibus ſtabiliunt: And *Gothofred* on the former of theſe Laws, infers this as a ſtanding rule, *Innovatum contra Canones non ſubſiſtit.* By the ancient Canons Biſhops were inveſted with this judiciary power: Chriſtian Emperours favourably confirm the ſame, and any innovation thereupon is of no force. The ſame power of juriſdiction in Biſhops is allowed of and made good by *Charles* the Great *In Capitular.* lib. 6. cap. 28.

Paulus Fiaceſius in his Book called *Praxis Epiſcopalis cap.* 4. *Articul. S. N. S.* Layes down this Rule, *Epiſcopus in ſua diœceſi, habet intentionem fundatam ſuper omnes de diœceſi:* And to confirm the ſaid rule ſo laid down by him, he produces there the Authority of many places in the body of the Canon Law. Indeed where the matter is not of Eccleſiaſtical cognizance, It is the incompetency of the matter or cauſe, not the quality, or place, or office of any perſon, that exempts him from that juriſdiction; for as the f rementioned Author obſerves, *Num.* 2 *Ibidem Epiſcopus alium Epiſcopum morantem in ſua diœceſi, ratione delicti ibidem commiſſi judicare & punire poteſt.* If a Biſhop have juriſdiction over another Biſhop within his own Dioceſs, where the Fact is of Eccleſiaſtical cognizance; there is certainly the like, if not a more forcible reaſon, that the Biſhops power ſhould reach to all others of his Dioceſs.

And *Javolenus* has delivered this Rational and elegant Rule, *Cui juriſdictio Data eſt, ea quoque conceſſa eſſe videntur ſine quibus juriſdictio Explicari non poteſt L.* 2. *ff de juriſdictione omnium judicum.* The granting of a juriſdiction, implyes a grant of all thoſe things that conduce to a right diſcharge

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and exercise of it: A power is included herein of presiding over and calling all parties under that jurisdiction to answer in judgement, of using Coercive means to such as are refractory and contumacious, and bringing matters to a final and full Execution. *Gothofred* sayes well hereupon: *Quoties casus omissus virtute & Emphasi expressi comprehendi potest, toties ad illum fieri debet extensio.*

But least this position may less pleasingly relish with some pallates, because of the Authority I have hitherto made use of to establish it by: The Imperial or Civil Law being not allowed in these Kingdoms, save only in some particular Courts and causes, which is to be said of the Canon Law likewise: And in respect of the latter of these two, some men are apt to look asquint upon any thing that is drawn out of it, or grounded thereon; They are ready to cry out upon such a thing, as a Popish encroachment, tending to Advance the Miter and Keyes above the Crown and Scepter*. To prevent this, or any the like imputation, my next, and that my principal endeavour, is to shew its accordance with the State, Constitution, and Lawes of these Kingdoms of *England* and *Ireland* under His Majesties Government; that is, with the Ecclesiastical, and with the Municipal Lawes thereof, and with the Kings Prerogative Royal. In respect of all which, I do not doubt to affirm, That this position *viz.* [That all persons whatsoever within any Dioces regularly, and *de jure communi*, are subject to the jurisdiction of the Bishop of that Dioces in matters and causes of Ecclesiastical cognizance.] That this position, I say, is agreeable to the Ecclesiastical Lawes of these Kingdoms; Not repugnant to the Municipal Lawes there-

* Yet these make up a part of the Kings Ecclesiastical Lawes being so qualified as by Statute is required in 25 *Hen.* 8. *cap.* 19.

thereof; Neither is it, *thirdly*, any thing intrenching upon, or infringing His Majesties Prerogative Royal; These all require distinct and particular considerations.

1. It is agreeable to the Ecclesiastical Lawes of these Kingdoms, in His late Majesties Proclamation of Royal Assent given to the Book of Canons and Constitutions Ecclesiastical of this Church of *Ireland, Anno* 1634. I observe two things relating to our present purpose, the former is a strict injunction upon all persons whatsoever to observe and obey them. *We do not only by our said Prerogative Royal and Supream Authority in causes Ecclesiastical, ratifie, confirm and establish by these our Letters Patents the said Canons, Orders, Ordinances and Constitutions, and all and every thing therein contained, as is aforesaid; but do likewise propound, publish and streightly enjoyn and command by our said Authority, and by these our Letters Patents, the same to be diligently observed, executed and equally kept, by all our loving Subjects of this our Kingdom, in all points wherein they do or may concern every or any of them, according to this our Will and pleasure hereby signifyed and expressed.*

The other thing I observe therein, is that impartial Execution of them (which is required to be made, and by whom to be made) upon all persons *whatsoever that refuse to obey them:* so it afterwards follows *Streightly charging and commanding all Arch-Bishops, and all others that exercise any Ecclesiastical jurisdiction within this Realm, to see and procure, that the same Canons, Constitutions, Orders and Ordinances, be in all points duly observed. Not sparing to execute the penalties in them severally mentioned upon (Any) that shall wittingly or wilfully break or neg-*

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left to obſerve the ſame: as they tender the Honour of God, the peace of the Church, tranquility of the Kingdom, and their duties and ſervice unto Us their King and Sovereign. All are commanded to obey theſe, none have an Immunity from being puniſhed if they do not obey them.

In the laſt Canon of that Book, It is decreed, That if (*Any*) within this Nation ſhall deſpiſe and contemn the Conſtitutions thereof (Ratified and confirmed by Regal power) or affirm that none ſhall be ſubject to them, but ſuch as were preſent and gave their voyces to them, He ſhall be Excommunicated, and not reſtored, until he ſhall publickly revoke his Error. In the 140 Canon of the Church of *England*, publiſhed *Anno* 1603. It is more particularly and expreſly ſet down and declared, that all *manner of Perſons, both of Clergie and Laity, are to be ſubject to the Decrees mentioned in them in cauſes Eccleſiaſtical: Although they were not themſelves particularly aſſembled in the ſame Sacred Synod.*

Let us now put both theſe things obſerved, together, and the reſult is this: Here is a juriſdiction declared in reſpect of certain matters and cauſes, and in reſpect of Perſons indefinitly ſet down over all: And in whom is this juriſdiction declared to be? namely, in Arch-biſhops, Biſhops, &c. over whom is it declared to be? over all ſurely. The injunction of inflicting penalties in caſe of diſobedience is as univerſal and extenſive ſubjectively, as is the command of obedience: Here is no diſtinction nor exemption made of any Perſons, under any qualification, or Veſted with any office, or ſubordinate civil power, ſo as they ſhould be thereby priviledged from Eccleſiaſtical juriſdiction in matters

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appertaining thereunto. And *Ubi lex non distinguit, nec nos distinguere debemus*, where the Law makes none, neither may we make any distinction.

I have made my first instance in these Canons as part of the Kings Ecclesiastical Lawes: But I am not to learn, that when the Authority of our Canons is urged, and that obedience which is required to them, is called for, There are a generation of such as are wise in their own conceits, men of mighty deep understandings, who think they pierce further into things, and understand more than their poor shallow Brethren are able to do: And these will question the Validity of these Canons, and their legal obligingness on the Kings Majesties Subjects. To all such therefore I shall fairly offer a few considerations, and then leave it to their own sober thoughts to determine, what Coherence there can be betwixt a disowning, or caviling the Authority of our Ecclesiastical Canons, and the profession of being dutiful and obedient Subjects.

1. Many learned men, both of the Municipal and Civil Law, joyn in this opinion, and affirm, That the Kings Majesty may by virtue of His Supream Authority in matters Ecclesiastical, confirm and ratifie into the force of Law Canons made in Convocations, and that they be a part of the Kings Ecclesiastical Lawes. *Princeps tanquam supremus post Deum gubernator potest in causis Ecclesiasticis statuere quicquid verbo divino, statutis & consuetudinibus Regni sui non repugnaverit* Cosen. *de Politeia Ecclesiastic. Anglicana Tab.* 1. *A.* And then he specifies the matter of his former Assertion thus, *viz.* That this supream power of our King, is in *Condendis novis legibus, sive canonibus, in ijsdem administrandis & re-*

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laxandis circa ſtatum Eccleſiaſticum; and this done, *cum Regius aſſenſus fuerit adhibitus iis, quæ Synodus decernenda Cenſuerit ibidem Tab.* 2. *In Synod Nationali vel provinciali Regis reſcripto convocato, nihil tractari aut determinari poteſt, niſi eo aſſentiente, nec quicquam vim legis obtinet priuſquam Regalis aſſenſus adhibitus fuerit. Dr. Zouch. Deſcript Juris Eccles. p.* 1. Sect. 2. See alſo to the ſame purpoſe, *Dr.* Duck *de authoritate Juris civilis in Anglia lib.* 2. *cap.* 8. *p.* 3. *Sect.* 27. And the L rd chief Juſtice *Cook* 4. *p. Inſtit. cap.* 74. cited thereby him.

2 The King himſelf in the Proclamation before mentioned, declares that ſuch Canons, Conſtitutions, &c. agreed upon by the Arch-biſhops, Biſhops, and Clergie of *Ireland*, to the end and purpoſe by him limited and preſcribed unto them, *He has given His Royal aſſent, according to the form of a certain ſtatute or Act of Parliament made in that behalf; And by his Prerogative Royal, and Supream Authority in matters Eccleſiaſtical, he has ratified and confirmed the ſaid Canons being one hundred in number, by his Letters Patents unaer his great Seal of* Ireland; And then follows His Majeſties ſtrict injunction upon all His loving Subjects of this Kingdom to obey and execute the ſame, which I inſiſted upon before.

3. Beſides His Majeſties Prerogative Royal and Supream Authority in cauſes Eccleſiaſtical, the King is likewiſe by Act of Parliament veſted with power for this purpoſe, and that is the Statute 25 *Hen.* 8. *cap.* 19. called the Petition and Submiſſion of the Clergie to the King; For the Biſhops and Clergie in Convocation having each one ſeverally promiſed in *verbo ſacerdotis*, never henceforth to preſume to attempt, alledge, claim, or put in uſe, or enact, promulge or execute any new Canons, Conſti-

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tutions or Ordinances without the Kings moſt Royal aſſent had and obtained thereunto; upon which promiſe and ſubmiſſion it was enacted by Authority of Parliament; That all Convocations in time to come ſhould always be aſſembled, by the Authority of the Kings Writ. And that the Kings licenſe and authority being had, they might make, promulge and Execute ſuch Canons, Conſtitutions and Ordinances Provincial and Synodal, which being ratified, confirmed and approved under His Majeſties Great Seal, they then become of legal force upon the Subject. This Proviſo indeed follows, That no Canon nor Ordinance ſhall be made or put in Execution by the Authority of the Convocation of the Clergie, which ſhall be contrariant, or repugnant to the Kings Prerogative Royal, or the Cuſtoms and Statutes of this Realm *&c.* *Raſtals* collection word (*Rome*) numb. 1.* The like Statute to this particular we have enacted in *Ireland*, Entituled, *An Act againſt the Authority of the Biſhop of* Rome *in viceſſimo Octavo Hen.* 8. and referred to in the Proclamation before ſpoken of in the ſecond conſideration.

* which *Statute* is but declarato y of the Common Law, ſays my Lord *Coke*, 4. *Inſtit. cap.* 74. p. 323. So that the ſame is grounded both on Statute and Common Law.

A Great Lawyer one Mr. *J. M.* (in a ſpeech before a Committee of the Lords, at the Parliament held *Anno* 1641.) Having occaſion to ſpeak of this Statute (for his ſpeech was againſt the Canons made the year before) avouched plainly that, that clauſe, *The Clergie ſhall not make Canons without the Kings leave, implyeth not that by his leave alone, they may make them*: But certainly the moſt knowing men in any Science or faculty, have not the priviledge of never miſtaking in what they ſay: for to him that adviſedly conſiders the matter and ſcope

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of that Statute, it will appear plainly, That the abridging the over-growing power of the Clergie assumed by them in making and enacting Canons, and pressing their authority on others: And together with this, the cutting them off from any relation to the Bishop of *Rome*, and making them dependants on the King alone, for the better ordering of what should be debated and determined in their Synodical meetings; were, if not the only, yet the principal aims of that Statute: Add here further, that a successive and continued practice from the time when that Statute was made to this day, delivers the best and truest sense of it.* For thus as I have set down, it was practised in the times of *Edward* the 6th, Queen *Elizabeth* 1562. King *James Anno* 1603. King *Charles* the first in this Kingdom of *Ireland Anno* 1634. And though I say nothing of the Canons themselves made in the year 1640. (because all authority as to them is annulled by Act of Parliament, *Anno* 13 *Caroli Secundi*) yet the Commission granted to the Convocation of that year, at the first opening of the Parliament, and of it, was according to Law; and this speaks plainly of the Kings leave and license granted and alone needful herein; see more fully thereof in Dr. *Heylins* life of the Arch-bishop of *Canterbury*, *p.* 423. 424. 425.

* *Practica est legum optima interpretatrix.* Baldus.

I conclude this matter with the decision of a great Casuist: He in discoursing of Ecclesiastical Laws, and the manner how they are enacted in the Church of *England*. *Jus condendi leges Ecclesiasticas* (saies he) *est penes Episcopos, Presbyteros, aliasq; personas à totius Regni clero rite electas & in legitima Synodo rite congregatas: Ita tamen, ut ejus juris, sine*

poteſtatis exercitium in omni Repub. Chriſtiana ex Authoritate Supremi Magiſtratus Politici pendere debeat: Idq; & aparte Ante (ut loqui ſolemus) & aparte poſt vir: ut nec iis ſtatuendi Canones Eccleſiaſticos cauſâ liceat convenire, niſi aut ipſius mandato & juſſu ad id negotii convocatis: aut ejus ſaltem authoritate, Venia ab eo petita & obtenta munitis: Nec Canones in quos illi ſic conſenſerint, tali ſint, aut vim aliquam habeant obligandi, quoad ſupremi Magiſtratus aſſenſus accedat: Cujus approbatione & publica authoritate ſimulac confirmati fuerint, illico pro legibus habendi ſunt & ſubditos obligant, Biſhop Sanderſon *de conſcient. obligat. Prælect. 7. Sect. 30.* Mr. *Hooker Eccles. Polit. Book 8. in p. 219. 220. 221. &c.* Thus much has been ſaid touching the Canons of our Church, and their Authority, ſo far forth at this preſent, as ſuits with the preſent occaſion, and what they were produced in proof of.

In ſeveral Provincial Conſtitutions we find it Decreed, That concerning matters belonging to Eccleſiaſtical cognizance, proceedings may be made againſt any Layman or publick Officers, as Sheriffs and others, even to the inflicting publick Cenſures upon them. Many of this kind will occur to the Reader that is converſant in them; That Conſtitution *Æternæ Sanctis de pœnis*, Enacted in a Council at *Lambeth* under *Boniface* Archbiſhop of *Canterbury* Anno 1260. In the time of King *Henry* the third. And that Conſtitution *ut invadentibus de immunitate Eccleſiæ*, Enacted by the ſame *Boniface*; likewiſe the Conſtitution *contingit aliquando eodem*, And *Accidit Novitate perverſa eodem*, Enacted by *John Stratford* Archbiſhop of *Canterbury* in the time of King *Edward* the third. Now if it be here ſaid, that

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theſe Conſtitutions were made before the Statute of *Præmunire* came forth, and ſo proceeded more peremptorily, and not with that ſubmiſſive regard and dutiful obedience to the Crown, as they ought to have done. I anſwer, by acknowledging thoſe Conſtitutions to aim indeed at the reſtraining of the Kings Prerogative, and of his Temporal Courts, and therefore not of any force now, or that proceedings ſhould be guided thereby. * But this mention is made of them to ſhew Hiſtorically what was then practiſed and held uſually; and moreover to evince, that where the Rights of the Crown are not thereby impaired, nor any of the Kings Temporal Courts invaded; Eccleſiaſtical proceedings may be made againſt any Perſon, and his being in any ſubordinate civil office does not exempt him therefrom. I muſt yield to, and acknowledge what the Statute 25 *Hen.* 8. *cap.* 19. has determined, *viz.* All Canons, Conſtitutions, Ordinances and Synodals Provincial that had been then made, are received into the body of the Eccleſiaſtical Laws, and are Eſtabliſhed to be the Eccleſiaſtical Lawes of *England*, and become of good force and validity: but with this neceſſary proviſo herein, *quatenus conſuetudinibus & ſtatutis Regni non repugnant, nec prerogativæ Regiæ adverſantur*, Dr. *Zouch de jure Eccleſiaſt. p.* 1. *Sect.* 1. So the Statute it ſelf reports of them, that they are of force and ſtill binding, ſo far forth, as they be not contrariant, nor repugnant to the Laws, cuſtoms, and ſtatutes of this Realm, nor to the Danger or Hurt of the Kings prerogative Royal.

* Sir *Tho. Ridley* in his View &c. leaves it without deciſion, whether theſe conſtitutions be annulled by the Act of Parliament *viz*, 25. *Hen.* 8. *c.* 19. He determines not abſolutely, I ſay but refers it to better judgements.

In the *Formula* of Juridical practice for cauſes Eccleſiaſtical ſet forth by *Francis Clerk*, and which is approved in all the Conſiſtories and other Eccleſi-

aſtical Courts of *England* and *Ireland*. In this *Formula*, I ſay, There is a title, namely, the two hundred and fifteenth title of that Book, after what manner to begin and proceed in any Eccleſiaſtical cauſe (perhaps at the inſtance of a party) againſt any Community as Dean and Chapter, Maſter, Fellows, and Scholars of any Colledge, &c. In the body of which title, the manner of proceeding againſt any Mayor and Community of a City, particularly that of *London*, is deſcribed; whence I make this Collection, That what is declared as a matter to be obſerved in Eccleſiaſtical practice, when occaſion requires a proceeding againſt any Mayor or Community of a City: that does certainly imply, that ſuch a Mayor and Community are ſubject to Eccleſiaſtical juriſdiction, and conſequently to ſuch penal coercions and cenſures (the matter ſo requiring it) as are properly inflicted thereby. Hitherto concerning the firſt particular, that this poſition is agreeable to the Eccleſiaſtical Law.

2. As this poſition is agreeable to the Eccleſiaſtical Law, ſo it is not repugnant to the Kings Temporal Laws, or the Municipal Laws of theſe Kingdoms. It is not repugnant to the Statute Law: The Statute called *Magna Charta* confirmed by King *Henry* the Third in the Ninth year of His Reign, and by ſo many Kings ſince this Statute (ſaid to be the Ancienteſt written Law that is now extant, and the Breviate and Summary of all the written Laws of *England* and moſt beneficial to the Subject) declares in the firſt Chapter thereof, That the Church of *England* ſhall be free, and have all her Holy rights and liberties inviolable.

* In

* In the Thirty ſeven Chapter of the ſaid Statute, There is a Reſerve to all Archbiſhops, Biſhops, &c. Of all their Liberties and Priviledges: one branch of which Liberties and Priviledges and Rights, is this power of juriſdiction over all perſons in their reſpective Dioceſſes.

* *Et habeant omnia jura ſua integra*) that is, all Eccleſiaſtical perſons ſhall enjoy all their lawful juriſdictions, and other rights without any diminution or ſubſtraction whatſoever. D. *Coke* on *Magna Charta. cap.* 1.

Edward the firſt, the Son and Succeſſor of this King, ordained the Statute called *circumſpecte Agatis* in the thirteenth year of His Reign. It has been affirmed concerning this Law, that it was a prelatical Conſtitution, becauſe inſerted in the Provincial Conſtitutions in the title *de foro competenti*: or at the moſt, one onely of the Kings Writs iſſuing out on ſome occaſion leading thereunto. But to confirm the Authority hereof, My Lord chief Juſtice *Coke* determines of it after this manner; though ſome have ſaid this was no Statute, but made by the Prelates themſelves: Yet that it is an Act of Parliament, is not only proved by our Books, but alſo by an Act of Parliament. *Inſtit. p.* 2. *p.* 487. In this Statute then (ſet down as a boundary, betwixt the Spiritual and Temporal juriſdiction) full power and authority is given or confirmed rather to the exerciſe of juriſdiction Eccleſiaſtical, over all perſons indiſtinctly, in ſuch caſes as belong to and are mentioned in it.

Jura ſua) ſayes the ſame Author *ibidem*, prove plainly, that no new rights were given to them, but ſuch as they had before hereby are confirmed, ſo that it followes, that what amplytude and fulneſs of juriſdiction they had before, is hereby confirmed.

In the Ninth year of His Son and Succeſſor King *Edward* the ſecond, came forth the ſtatute called *Articuli cleri*, by the form and purport of which, it appeareth, that for any matter Eccleſiaſtical, indefinitely Men may be cited; and if cited, then ſubject to all judicial conſequences therein. In the Twelfth Chapter of this ſtatute, The queſtion is put, Whether the Kings Tenants be ſubject to the Eccle-

Eccleſiaſtical juriſdiction, as others are; and if they may be Excommunicated for their manifeſt contumacie, and after forty dayes continuing ſo, whether they may be ſignified and attached by the Kings Writ? The anſwer given to the queſtion is ſuch: It was never yet denyed, nor ſhall be hereafter. * It ſeems the Kings Tenants ſuppoſed themſelves ſuch ſpecially priviledged perſons, as to be thereby exempted from ſpiritual juriſdiction; but that would not ſerve their turns, And ſo *a pari*, what would not be ſufficient for them, will not be ſufficient for others though in office under the King.

During the long Reign of Fifty years of King *Edward* the Third, the great Charter was ſeveral times confirmed. The liberties, priviledges, and franchiſes of the Clergie were new ratified in the fourteenth and five and twentieth years of His Reign. And ſo in the firſt, ſixth and eighth and twelfth years of *Richard* the ſecond. In the firſt ſecond and fourth years of *Henry* the fourth, It was enacted, That the Lords Spiritual as well as Temporal, ſhould have and enjoy all their Rights and Liberties.

I grant indeed that in the Reign of two of theſe preceding Kings, *viz.* *Edward* the third, and *Richard* the ſecond, that the two ſtatutes of Proviſo's and Præmunire were made: But he that ſhall duly obſerve the end wherefore, and the matter wherein, and the perſons againſt whom theſe ſtatutes were made, will not be able to find that any abridgment, but rather a firmer ſettlement of Epiſcopal juriſdiction, in the right Conſtitution of it, was intended and came thereby: That which was mainly aimed

* The cloſe of which Statute is after this manner. Ratifying, confirming and approving all and every of the Articles aforeſaid, with all and every of the Anſwers made and contained in the ſame, do grant and command them to be kept firmly and obſerved for ever, willing and granting for us and our Heirs, that the foreſaid Prelates and Clergie, and their Succeſſors, ſhall uſe, execute and practiſe for ever the juriſdiction of the Church in the Premiſes after the Tenor of the Anſwers aforeaid, without quarrel, inquieting or vexation of our Heirs, or any of our Officers whatſoever they be. *Poult. Collect* of ſtatutes p 101. in *fine cap.* 16.

aimed at, and provided againſt in theſe ſtatutes, was, to repreſs the encroachments of the Pope of *Rome*, even upon the Biſhops legal juriſdiction it ſelf. The Pope by His Emiſſaries in *England*, from time to time drained the Kingdom of its Wealth; He invaded the Kings Soveraign Rights, by Mandates *De providendo*, and expectative Graces, granted of Eccleſiaſtical livings before the Incumbents were dead: And beſides, He boldly intrenched on the Kings Temporal Courts, many ſuch unreaſonable greivances there were; which both King and People felt the load of, and which to make them the heavier, were fetch as far as *Rome*, to be put upon them.

But all this while, here are no exemptions to any particular perſons, or civil Officers to free them from Eccleſiaſtical juriſdiction, where it proceeded in due manner, and was exerciſed in matters properly cognizable by it; That which muſt have the note of remark put upon it, is this: Proviſion is here made under ſevere penalties againſt acting by a derived power from, and in an Uſurped juriſdiction under the See of *Rome*: This no Engliſh Biſhop might do then; This no Biſhop in *England* or *Ireland*, might, or does, or may do now.

One Act of Parliament will beſt ſerve to give light to another. Now the ſtatute 25 *Hen.* 8. *cap.* 21. affirms expreſly, that the ſtatute of proviſion and præmunire of the 16th *Richard ſecundi*, was made againſt ſuch as ſue to the Court of *Rome* againſt the Kings Crown and Dignity: ſo that Epiſcopal juriſdiction in each reſpective Dioceſs, and in matters of Eccleſiaſtical cognizance, is ſo far from being impaired

paired by theſe ſtatutes, that in truth it is more firmly fixed and corroborated thereby.

All theſe things were before the Reformation in *England*, towards the dawning of which, we meet with a noted ſtatute in the 23th year of King *Henry* 8. *cap.* 9. deſigned, as is conceived, to reſtrain the Exorbitances uſed in ſumuoning people out of the Dioceſs wherein they inhabit without leave of their Ordinaries: which thing, as it tended to the great vexation of the perſons ſo cited; it alſo aimed at the very encroaching on the ſeveral Ordinaries Rights, on pretence of ſome legantine power, or *Nuncio's* Court or other extraordinary cauſe. In the preamble of which Statute, it is affirmed, That all perſons of any quality or condition may be cited before their Ordinaries: (ſo it be in proper cauſe and due Order.) The body of that ſtatute provideth, that no citation be made out of the Dioceſs where the party dwelleth, but where ſome ſpiritual offence or cauſe is committed or done. *So that a contrario ſenſu* (*ſayes the learned and judicious* Dr. *Coſen Apol. p.* 67.) *in any offence or cauſe ſpiritual, any Subject may be cited within his or her Dioceſs: And in ſome peculiar cauſes there mentioned, and recited, they may be cited out of their Dioceſs.* Now the power of citing, preſuppoſes a full juriſdiction: that is, a power to proceed further thereupon in all due requiſits and forms that belong to any cauſe, whether it be upon inſtance, or of matter of correction.

Since the Reformation that all juriſdiction Eccleſiaſtical is *de facto*, as it was alwayes *de jure* united to, and ſo derived from the Imperial Crown of *England*; there is by the ſtatute of the firſt of Queen

Queen *Elizabeth*, *cap.* 1. Full power and authority given to the Eccleſiaſtical Judges for the Executing of Eccleſiaſtical juriſdiction as before time. See alſo a ſtatute made in *Ireland*, in the 28. year of King *Henry* the 8. called an Act againſt the Authority of the Biſhop of *Rome*: towards the latter end thereof—*Provided, that notwithſtanding this Act, or any other Act made for the taking away of the ſaid* Biſhop *of* Romes *Uſurped power, Authority, Prehemi-nence, Juriſdiction or any other thing or things in the ſame compriſed; That al and every Archbiſhop, Biſhop, Arch-Deacon, Commiſſary and Official, and every of them, ſhall, and may uſe and exerciſe in the name of the King only,* [a] *all ſuch Canons,* Conſtitutions, *Ordinances and Synodals provincial, being already made, for the direction and order of Spiritual and Eccleſiaſtical cauſes, which be not contrariant nor repugnant to the Kings Lawes, ſtatutes and cuſtoms of this Land, nor to the Damage and Hurt of the Kings Prerogative Royal, in ſuch manner and form, as they were uſed and Executed before the making of this Act: till ſuch time as the Kings Highneſs ſhall order and determine according to his Lawes of* England, *and ſuch order and determination, as ſhall be requiſite for the ſame, and the ſame to be certified hither, under the Kings Great Seal, or otherwiſe ordered by Parliament.*

Vid. infra p. 53.

And while I am thus enumerating the ſeveral ſtatutes which the former poſition is not contrariant to, but rather ſtrengthned by, I muſt not omit the making mention of thoſe ſtatutes and Acts of Parliament that are ſet out and publiſhed, meerly upon Eccleſiaſtical cauſes and matters (which are reckoned by ſome, as thoſe that enter into, and

make up the body of the Kings Eccleſiaſtical Laws, *Zouch de jure Eccleſ. p.* 1. *Sec.* 1. *&c.*) whether theſe be matters of a civil or criminal Nature: matters of civil cognizance are either ſuch as concern Precontracts and other matrimonial cauſes. In *Ireland*, 33 *Hen.* 8. *cap.* 6. In *England*, 32 *Hen.* 8. *c.* 38. 1 and 2 *Edward* 6. *c.* 23. 1 *Elizab.* 1. or ſuch as concern Teſtamentary matters, 21 *Hen.* 8. *cap.* 5. In this Kingdom, 28 *Hen* 8. *cap.* 18. Alſo matters of Tythes, and the purſuits and impleadings thereupon: Here, 33 *Hen.* 8. *c.* 12. In *England* to the two Statutes mentioned before, called *circumſpecte Agatis*, and *Articuli Cleri*. Theſe may be added, *viz.* 1 *Richard* 2. *c.* 14. 27. and 28 *Hen.* 8. *c.* 20. 32 *Hen.* 8. *c.* 7. 2 *Edward* 6. *cap.* 13. Concerning all which, all perſons, without diſtinction of place or office, who are concerned in any of theſe cauſes, they are ſubject to Epiſcopal juriſdiction, to which the ſame cauſes do appertain, and by which they are managed. And for matters which are criminal: To paſs by other ſtatutes, I inſtance in theſe two only. The one *De Excommunicato capiendo*, in 5 *Elizab. c.* 23. where the ſeveral crimes therein mentioned, ſubject all ſuch as ſhall be detected and found guilty of any of them to the Eccleſiaſtical Tribunal: The other is the ſtatute for Uniformity of Common-Prayer, &c. 1 *Elizab. cap.* 2.

In this ſtatute, after a charge given in this Solemn and ſtrict manner—*The Queens moſt Excellent Majeſty, The Lords Temporal, and all the Commons in this preſent Parliament aſſembled, do in Gods Name earneſtly require and charge all the Archbiſhops and Biſhops, to endeavor their utmoſt for the due execution thereof. And then it follows for their power and authority in this*

this behalf— Be it further Enacted by the Authority aforesaid, That all and ſingular the ſaid Archbiſhops, Biſhops, &c. *and all other their officers, exerciſing Eccleſiaſtical juriſdiction, as well in places exempt, as not exempt, within their Dioceſs, ſhall have full power and authority by this Act, to reform, correct and puniſh by cenſures of the Church,* all and ſingular Perſons, *which ſhall offend within any of their Juriſdictions or Dioceſſes after the ſaid Feaſt of* St. John *the Baptiſt next coming againſt this Act or Statute, any other Law, Statute, Priviledge, liberty or proviſion, heretofore made, had, or ſuffered to the contrary notwithſtanding.* See alſo the ſtatute made *ſecundo Elizab. cap.* 2 here in *Ireland.* The thing we had in hand to make good was this: That all perſons whatſoever within any Dioceſs regularly, and *de jure communi,* are ſubject to the Biſhop of that Dioceſs in matters and cauſes of Eccleſiaſtical cognizance, & that this poſition is not repugnant to the ſtatute Laws of theſe Kingdoms: This I think has been fully evidenced, and needs no further enlarging upon.

And to give one inſtance of this juriſdictive and coercive power in Biſhops over all indefinitely, it ſhall be in the matter of ſubſtracting and detaining of Tythes, a cauſe properly and anciently cognizable before them. That ample Charter granted by King *William* the firſt to the Clergie, and mentioned at large by Mr. *Selden* in his Hiſtory of Tythes, *cap.* 8. *p.* 225. The concluſion of which is after this manner: *Quicunq; decimam detinuerit per juſtitiam Epiſcopi & Regis (ſi neceſſe fuerit) ad reddditionem arguatur.* Startle not, Reader, at the eying of this, that the Biſhops power of Juſticing has here precedency of place before the Kings: conceive not,

that this was to ſet Epiſcopal power on high, and make Regal Authority ſubordinate to it: But this declares, to whoſe judicial cognizance under the King, the proceeding againſt detainers of Tythes (of what quality and condition ſoever they be) does immediately appertain, & who is the Officer and Miniſter of Juſtice therein: And the Kings power being after mentioned, is ſo ſet down by way of judicial order and conſequence, not of ſubordination in power and Authority: Thus much theſe very words (*ſi neceſſe fuerit*) plainly do import, as if it were ſaid, ſhould any of theſe detainers prove refractory and contumacious againſt the Biſhops authority, ſo that there were a neceſſity of invoking the ſecular power, the King would then be preſent therewith, and by pœnal coercions compel them to give obedience thereto.

Now for what concerns any other part of the Common Law, it may be alſo both ſafely and truly in reſpect of the thing it ſelf affirmed, That Eccleſiaſtical proceedings according to the poſition laid down, bears no contrariety therewith, as is ſet down by *Dr. and Student, lib.* 1 *c.* 6. That Epiſcopal juriſdiction is of force in this Kingdom even by the Laws of this Realm, in certain particular inſtances mentioned, is reported by Dr. *Coſen* from a certain Author writing in King *Hen.* 8th time (*Apol. part* 1. *p.* 7.) The Author is ſhewing, that the Biſhop of *Rome* has not, nor ought to have any juriſdiction in His Majeſties Kingdoms by the Laws of this Realm: The medium whereby he proves this thing is this, becauſe Certificates of Biſhops in certain caſes are allowed by the Common Law, and admitted in the Kings Courts; But the Popes Certificate

ficate is not admitted, *vid.* Lord *Coke Inſtit.* 4. *cap.* 74. *circa initium. & de jure Regis Eccleſiaſtico. p.* 23. & 26. *& diverſos caſus ibidem citatos.* Beſides, in the ſtatute of Appeals, 24 *Hen.* 8. *cap.* 12. mention is made of ſpiritual juriſdiction exerciſed in cauſes belonging to the ſame, and it is there expreſly ſaid, *That ſuch exerciſe is grounded on the Laws and cuſtoms of this Realm: circa initium dicti ſtatuti.* Now certainly a ſtatute beſt informs any one, what is truly, and what is agreeable to the Common Law. The Biſhops are by the Common Law the immediate Officers and Miniſters of Juſtice to the Kings Courts in caſes Eccleſiaſtical, Lord *Coke de jure Regis Eccleſiaſtico. pag.* 23.

And for what belongs to any cuſtom or ancient uſage that has the force of Law among us, I cannot find out any ſuch that is impugned by what I have affirmed: But thus I may ſafely determine, That if any manner and uſe of things eſtabliſhed by long uſe and conſent of our Anceſtors, and ſtill kept on foot by daily continuance and practice, be a cuſtom, and may ſet up for a Law not-written: Then certainly the thing that has been affirmed (that is, the exerciſe of Eccleſiaſtical juriſdiction by Biſhops over all perſons within their reſpective Dioceſes, and in cauſes belonging to it) and thus far endeavoured to be proved, is not at all contrariant thereto, but of perfect agreement, yea of the ſame Nature with it.

Are there any that after all this will make their reply, and tell us of perſons exempted from Epiſcopal power, and the exerciſe thereof bound up and reſtrained in reſpect of ſuch, and for proof of this will alledge the Authoritative proceeding of

King *William* the Conqueror, who would not ſuffer any Biſhop to Excommunicate any of his Barons or Officers, for *Adultery*, *Inceſt*, or any ſuch Heinous crime, except by the Kings command firſt made acquainted therewith. By the way it muſt be known, that the word Baron, is not to be taken in that limited and reſtrictive ſenſe, as to underſtand thereby the Higher Nobility, to which Votes in Parliament do belong: But generally for ſuch who by *Tenure in chief*, or *in Capite* held land of the King, *Selden ſpicelegium ad Eadmerum, referente Tho. Fullero B.3. Hiſtor. Eccleſ p.* 4.

Whatſoever now ſhall be collected hence to overthrow what has been before ſaid, is eaſily anſwered: For King *William* very well underſtood his own Imperial power and right over the whole body Politick (whereof the Clergie were a part) And that by vertue thereof, the Actual Exerciſe of both Civil and Eccleſiaſtical juriſdiction did flow from him. And that he might where and when he ſaw cauſe, reſtrain the Execution of either, how long, or in reſpect of what perſons he pleaſed, and this by ſpecial priviledge and immunity granted by him to ſuch perſons: And yet that juriſdiction ſo reſtrained, be no more impeached thereby, than the ordinary ſetled courſe of the common Law, by the Exemption of one or more particular perſons from being proceeded againſt therein. Let us ſeek to underſtand this by a very plain and familiar example every day obverſant before us: His Majeſty has a ſtanding Army in *Ireland* in Pay, and under His Command: All the Officers and private Souldiers therein, for ſome good reaſons beſt known to himſelf in His great wiſdom, are exempted from

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any Civil, or criminal Impleadments before the Eccleſiaſtical or Temporal Tribunals, without leave firſt had and obtained from His Royal ſelf, or His Vice gerent here. Now will it not be a weak & inconſequent way of arguing, to conclude from hence, that the Judges in the Temporal Courts have not an univerſal juriſdiction ſubjectively, in reſpect of thoſe over whom they are appointed, becauſe a few are by ſpecial priviledge exempted from it? It will be ſo too certainly, to conclude the like of the Biſhops, the Kings Eccleſiaſtical Judges in the Eccleſiaſtical juriſdiction, becauſe ſome certain perſon or perſons may by peculiar diſpenſation be taken out of the ſame: let the utmoſt be urged that can be fetch't out of this preſent inſtance from *William* the Conqueror, yet we ſhall find enough to ſtil and quiet that (and in the ſame kind too) remember we but the 12:th *chapter* of the ſtatute called *Articuli Cleri*, a little before mentioned: By that it will be apparent, That King *William* even in this particular, did not ſo narrowly bound Epiſcopal juriſdiction, as King *Edward* the ſecond did let it looſe, extend and enlarge it. The one exempted his ſervants and Tenants from the Eccleſiaſtical juriſdiction: The other almoſt three hundred years after, and by a ſtatute Law, gave both up, and fully ſubmitted them to it.

Without more adoe: The queſtion is not whether the King as Supream Governour over all perſons, in all Eccleſiaſtical things and cauſes, may exempt any of his Retainers, or any ſubordinate Officers in places of Civil power under Him, from being impleaded or proceeded againſt in Eccleſiaſtical Courts: But the queſtion is, whether he has Actually

ally done it or no, or if done it, whether to persons so qualified as our case proceeds upon. The former I do not, I must not, I dare not deny: For the Regal power and Supremacy reaches as far in granting priviledges and immunities to any (who are thought worthy of the same) in respect of Ecclesiastical matters and tryals, as it does in respect of civil matters and tryals. What he may do in the one, he may do in the other. Thus I read, That the King by His Prerogative may give protection to such persons as are His debtors, so as not to be sued by their Creditors till Himself be satisfied, *Fitz. Nat. br. fol.* 28. *B.* Instances more might be given of this kind. So he may likewise exempt from the Ecclesiastical jurisdiction: But that His Majestie has Actually done this to persons so qualified as our case proceeds upon, and *quatenus*, as they are so qualified; is that thing he contrary to which I have hitherto engaged myself to make clear, and have yet something remaining to add thereto: For the present instance from *William* the Conqueror; It was no restraining of Episcopal jurisdiction, but in such a particular matter reserving to himself the power of appointing the exercise of it: or if it yet will be looked upon as a restraint put thereon, yet it must be withall considered, that he did not so much limit and restrain in this case, as he was pleased to give greater scope to it in a matter of far greater importance, as shall be shewed by and by.

Mean while I sum up this point thus; That the Established course of Ecclesiastical proceedings, is not repugnant to the Municipal Laws of this Kingdom; that by the gracious indulgence & concessions of our Pious Princes, a *liberty* and *power* is granted

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by them to the Biſhops to *exerciſe actually* Eccleſiaſtical juriſdiction upon the *Subjects* of the *Crown*: That they may be ſummoned: That refractory and contumacious perſons may by coercive power be reduced to good order: That compulſories may be iſſued forth and cenſures inflicted, where juſt occaſion requires, and all due requiſits have preceded: They may hear and determine in cauſes of inſtance between party and party, and alſo proceed againſt any criminals (under Eccleſiaſtical cognizance) of what quality and condition ſoever they be, for correction, and reformation of manners.

3. This Poſition, That all perſons within any Dioceſs regularly, and *de jure communi*, are ſubject to the juriſdiction of the Biſhop of that Dioceſs in all matters and cauſes of Eccleſiaſtical cognizance, is not any way intrenching upon, or infringing His Majeſties Prerogative Royal. The Kings Prerogative is called by Sir *Henry Spelman*, *Gloſſar. ibid. Lex Regie dignitatis*: by the Civilians, *Jus Imperii*: by the later *Feudiſts*, *jus Regaliorum*: And the import of all theſe, is compriſed in this deſcription given thereof. The Kings Prerogative is that ſpecial power, preheminence, or priviledge that the King hath in any kind over and above other perſons, and above the ordinary courſe of the Common Law. *Cowell ibidem.* A branch of this is the Kings Legiſtative power in Eccleſiaſtical matters and cauſes, with the advice and conſent of ſuch as are appointed thereto. And by the Statute of King *Edward* the ſecond, in the Seventeenth year of His Reign, called *Prerogativa Regis*, it is ſaid, *That whatſoever Gracious conceſſions the King is pleaſed to make unto the Honour of Gods Church and good of the Common*

wealth, and for the remedy of ſuch as be grieved; He would not that at any time they ſhould turn in prejudice of Himſelf, or of His Crown; but that ſuch Rights as appertain to Him, ſhould be ſaved in all points: Raſtal's Collection ibidem. Now the Actual Exerciſe of Juriſdiction Eccleſiaſtical, being that which by ſpecial Favour of our Kings is granted to the Biſhops after a very large and ample manner; if any thing therefore in that Grant, ſhould tend to the diminution of the Rights of the Crown, yet by the Statute before mentioned, there is ſtill a *ſalvo* to them in all reſpects whatſoever; ſo that in regard of His Majeſties Prerogative Royal, in this particular branch of it, as well as in all the reſt, the Poſition before ſet down, does not, nay, cannot indeed infringe the ſame.

I touched a little before the derivation of Eccleſiaſtical Juriſdiction as to the executive part of it from the Crown: As every Biſhop at the time of his Conſecration, does by Solemn Oath recognize the Kings Majeſty to be the onely Supreme Governor in this Realm, in all Spiritual and Eccleſiaſtical things and cauſes, as Temporal; and by receiving from the King a Patent of Reſtitution of His Temporalities, is thereby inveſted with Actual Juriſdiction (that is, a power to exerciſe and execute ſuch Juriſdiction, *in foro externo & contentioſo*, in ſuch cauſes as belong thereto) ſo in the exerciſe and proceedings made in the ſame, he depends upon the King, from whom he derives his authority and right to exerciſe: In all Appeals made to the King in His Chancery, He defers to him, as *habenti Supremam authoritatem Eccleſiaſticam*, being the chief and Supreme Ordinary; and, acquieſces in his final and ultimate deciſions.

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A little before, I mentioned a Grant of King *William* the Conqueror, wherein great ſcope was given to Epiſcopal Juriſdiction; it is now proper to ſet down what that was, and this Hiſtorical account we may take thereof: By this King, an entire Juriſdiction was aſſigned to the Biſhops by themſelves, wherein they ſhould have cognizance of all matters and cauſes relating to Religion. It ſeems, by the Ancient *Saxon* Law, the Biſhops and Sheriffs jointly kept their Courts together at certain ſet times of the year; in the Conquerors time, theſe two Juriſdictions thus concurring, were parted aſunder: *Fullers Church Hiſtory of Britain*, Book 3. p. 5. from *Eadmer*, who lived in the time of King *Henry* the firſt, gives ſome account hereof*: But I ſhall ſet down the ſame, in the words of a late, and a learned Writer, proper to the occaſion he was upon.

* *Spelman in Gloſſar. v. Hundredum.*

Conqueſtor porro Forum Eccleſiaſticum à Laico diſtinxit: Nam cum antea ſub Anglo-Saxonibus ſingulis menſibus Aldermannus ſeu Præſes unà cum Epiſcopo jus dixiſſent in Curia Centenaria, quam Hundredum dicimus, mandavit Epiſcopis & Archidiaconis, ne deinceps jus dicant in Curia Centenaria ſed in loco per Epiſcopum deſignando, ibique judicent, ſecundum Canones & Leges Epiſcopales; & contumaces contra eorum mandata Excommunicationis ſententiâ, & Brachio Regio parere cogantur, cum Præcepto Vicecomitibus & Præpoſitis Regiis dato, ne aliquem in jus vocent coram ſe de iis quæ ad Forum Epiſcopalem ſpectant. Dr. Duck, de Authoritate Juris Civilis in Regno Angliæ, *lib.* 2. *cap.* 8. *p.* 2. *ſect.* 26. And in the margent of his Book, alledges * *Coke's Inſtit. p.* 4. *cap.* 54. *& lib.* 2. *cap.* 6. *ſect.* 135. *Char.* 2. *Rich.* 2. *m.* 1.

* *Apud quem*—See the Charter more amply and fully declared; the ſame being granted and directed to Rhemigius, the firſt Biſhop of Lincoln *ib.*

By this it appears, how early the exerciſe of Eccleſiaſtical Juriſdiction by Biſhops was on foot in the Kingdom of *England*, and that as it derived it ſelf from the Crown; for beſides this diſtinct conſtituting of an Eccleſiaſtical Court from the Court of the Tourn, even before the ſeparation, before ſpoken of, was made; yet the Biſhops had then the judicial cognizance of Eccleſiaſtical cauſes and matters peculiarly reſerved to them, ſo it is plainly colligible from the Laws of King *Edgar*, among which this was one; *Celeberimus autem ex omni Satrapia conventus bis quotannis Agitor: cui quidem illius Dioceſeos Epiſcopus & Aldermannus interſunto quorum alter jura divina, alter jura humana populum edoceto:* Lord *Coke* on the Statute of *Circumſpecte Agatis v. Curia Chriſtianitatis.* I might yet trace Antiquity higher in this point, but my reading is too ſlender, and my opportunities too mean, that I ſhould think my ſelf able to give a punctual and exact Account thereof; Take notice only in brief, what the Pen of a learned Writer has ſet down—*The* Britiſh, Saxon, *and* Daniſh *Kings, did uſually with their Clergy, or great Council, make Eccleſiaſtical Laws, and regulate the external Diſcipline of the Church within their Dominions: Among the Laws of King* Edward *the Confeſſor, theſe were two of them; one, that makes it the office of a King to govern the* Church *as the Vicar of God; another, ſuppoſes a paramount power in the King over the Eccleſiaſtical* Courts, *becauſe they were to take cognizance of wrong done in Eccleſiaſtical Courts:* Archbiſhop *Bramhall's* Vindication of the Church of *England*, &c. *p.* 67. King *Edward* the Confeſſor was indeed after the time of King *Edgar* before mentioned; but taking both

both together, and what was done by both, thence is ſhewed, that the practice of former Kings was followed by them; and that there was an Eccleſiaſtical Juriſdiction then and before exerciſed by Biſhops, which exerciſe thereof derived from, and was regulated by thoſe and other preceding Kings of *England*.

That which has been ſaid, makes very fair for our purpoſe, and points out to us to take notice of theſe ſeveral obſervable things.

1. That the Exerciſe of Juriſdiction Eccleſiaſtical by Biſhops, in the right conſtitution thereof in the Kingdom of *England*, had no dependance on *Rome*.

2. That much of the intermediate practice in this kind, degenerated from its firſt and right inſtitution; and until the time of *Henry* the eighth, was a meer uſurpation and encroachment on the *Engliſh* Crown.

3. That whereas 'tis ſaid, The Biſhops were to judge *ſecundum Canones & Leges Epiſcopales*, by Canons (I underſtand) the Canons of General and Provincial Councils abroad, eſpecially the firſt four General Councils, according as was Enacted by the Emperor *Juſtinian*, *Authent. collat.* 9. *Novell.* 131. *cap. de Regulis. & cap. Sancimus igitur*: And by *Leges Epiſcopales*, I underſtand their Home-laws; I mean, the Eccleſiaſtical Laws made by the *Britiſh*, *Saxon*, and *Daniſh* Kings, with the Council of their Biſhops, variety of which may be found, by him that will conſult Sir *Henry Spelman's* Councils. The body of the Canon Law was not then in being; my meaning is, it was not ſo as ſuch: The ſeveral particulars that the Decrees conſiſt, and were made up of were indeed then and long before in being; but they were not compiled together, till near fourſcore years after

after this; and that was done by *Gratian* the Monk, in the year (as some say, for there is much difference in the computation of this time) 1149. (*Kidley's* view, &c. p. 74.) And by *Eugenius* the third allowed to be read in the Schools, and to be alledged for Law: And for the *Decretals*, &c. *Clementines* and *Extravagants*, they came in successively along while after: Here, by the way, is seen the vanity and wildness of some mens fancies, that by all means will have Bishops Courts to be of Popish extraction; and, that both in their Erection and Constitution, they receive influence and authority from the *Romish* Consistory: Than which, nothing is more untrue in its self, and unhistorical, as to the right deducing the primitive Institution hereof (not to speak of the Eastern Churches) even in the Kingdom of *England* it self.

* Of *Greg.* 9. set forth *Anno* 1230.
The *Decret. in Sexto Anno* 1297.
The *Clementines* of *Clem.* 5. set forth *Anno* 1317.
And not long after, were extant the *Extravagant's* of *John* the 22d, and other Popes.

4. This is also hence observable, That the present course commanded, and observed by the Bishops in the Exercise of this Ecclesiastical Jurisdiction, suits nearly with the ancient state thereof; and is so far from damnifying the Prerogative Royal, that it mainly asserts and vindicates the same.

It might perhaps be doubted, That different Jurisdictions in one Kingdom, and those exercised by persons of different professions, though deriving from one Supreme Head, would rather cause, than prevent many inconveniencies; and those inconveniencies so bad in their nature, as to detract from, rather than adde to the Supreme Magistrates Dignity and Prerogative; as namely, by introducing confusion and disorder in the management of

both,

both, and in the causes and matters to be managed in them, and occasioning continual jealousies and distastes betwixt the persons appointed to manage them, observed by my Lord *Bacon*'s Advancement of Learning, *Aphor.* 96. But, in truth, no such ill Effects do follow hereupon; for distinct Jurisdictions exercised by persons of several orders and professions in these Kingdoms, and vested with authority from the Supreme Magistrates so to do (though juridical proceedings therein be different from the ordinary form and prescribed course of the Common Law) argues a plenitude, not a defect of power; an advancing of it, not derogating from it, in that Supreme Magistrate granting the same; his great wisdom and prudence in a determinate stating the nature and bounds of each Jurisdiction; the appropriating certain causes to be heard and determined in them respectively, commanding all His Subjects to give due obedience thereunto, in such causes as are limited to those Courts, and which any Subject may be concerned in: And as both derive from, so to depend upon him, in an equal poise as to the Authority belonging to each; so that all the supposed inconveniencies are sufficiently provided against: And the ordering all these things in this set manner, is an effect of the Kings high Prerogative enabling him so to do, and is both by Custom and Law among us allowed of *; observe with me these following instances.

* The King is the indifferent Arbitrator in all Jurisdictions, as well Spiritual as Temporal, and it is a Right of His Crown to distribute to them; that is, to declare their bounds. *Lord* Hobbart's *Reports. Dr.* Jane's Case.

The Kings Majesty is pleased to confirm a peculiar Jurisdiction granted by His Royal Progenitors, to the

the two Universities of *Cambridge* and *Oxford*: The Chancellor of each University, or his Commissary, administer Justice according to the Civil Law, and the Customs and Statutes of the University, where the persons at variance together are Students, or one of them at least is such; insomuch as in personal Actions for Debt, matters of Accounts, or any Contracts made within their own Precincts, and in some criminal matters likewise, none of them may be called to *Westminster Hall*; but the cognizance thereof belongs to the Chancellor of the said University, or his Commissary, as is before said. If any Appeals be made from Sentences given in any such Trials, they are first interposed to the Regents, last of all to the Kings Majesty himself: *Cowell. Interp. in verbo (Privilege)* Dr. *Duck ut supra. sect.* 30. Will any man now say, That the Exercise of this power, is intrenching on the Kings Prerogative, because His great Courts at *Westminster* are not applied to, and a Jurisdiction distinct from and independent upon them is exercised? Surely no, because the Exercise of this power is granted by Royal Charter; it proceeds from, it depends upon, it is done in an acknowledgment of the Kings Supreme Power and Prerogative.

There is a Court of great Dignity and Honour, called the Court of the Constable and Earl Marshal of *England*: Herein are determined all Contracts touching Deeds of Arms out of the Realm, as Combats, Blazons of Armory, and the right of bearing Arms, *&c.* proper to particular Families; the manner of proceeding in this Court, is according to the form of the Civil Law *, the use and authority of which, is of great sway herein: Appeals that are

* L. *Coke* Jurisdiction of Courts. *ca.* 17.

are interposed from any definitive sentence in this Court, are brought to the Kings Majesty Himself, not to His Chancellor, the municipal Law is altogether secluded from hence; Justice is administred, Delinquents are punished, without any relation to that, or the Judges thereof; yet the Kings Prerogative is not infringed by the exercise of this Jurisdiction, because it is derived from the King.

I might add here the Court of the Admiralty, the peculiar Jurisdiction exercised within the Cinque Ports by the Lord Warden thereof: In these Courts, matters both civil and criminal are tryed according to the course prescribed by the civil Law; but in the following Leafs I shall have occasion more distinctly to write something relating to these matters, and respectively to these two Courts. Now as it is in these different Jurisdictions they derive from the King, His Subjects are bound by command from Him, to obey the Authority thereof; if they refuse to obey, by pœnal coercions proper to each, they may be compelled to it; yet still the Royal Prerogative is not any whit diminished, nor the Rights of the Crown at all impaired hereby: As it is thus (I say) in the distinct Jurisdictions, so it is in the exercise of Episcopal Jurisdiction in the Ecclesiastical Courts.

And now I have uttered thus much, I perceive my self beginning to walk on a narrow, slippery ridge, where a steep precipice is on each side. The danger of falling on one hand, is, least I abase the Prerogative so low, as to subject the King in Ecclesiastical causes and matters under the Resolves and Decisions of Classical Assem-

blies*, as the *Presbyterians* do; or bring Him in subordination to the Bishop of *Rome*, as the *Papists* do. The danger on the other hand, is the over-exalting of the Prerogative, so that it might be thought we attribute to the King (as sometimes the *Papists* object to us) a power to exercise Sacerdotal Offices in the Church, to inflict censures*, &c.

Now to walk even and steddy betwixt these two dangerous downfalls, is that which must be endeavoured; and therefore whereas we own, and solemnly recognize the Kings Supremacy in Ecclesiastical matters and causes, it is to be understood according to the sense and meaning set down in the words of the 37*th* Article of the Church of *England*, and also in the Article of the Church of *Ireland* concerning civil Magistrates. The Kings Majesty hath the chief Government of all Estates Ecclesiastical and Civil within His Dominions, see Queen *Elizabeth*'s Injunctions set forth in the first year of Her Reign. Now this Supremacy keeps the King above all others within His own Kingdoms; and, it keeps Him from a subordination either to the *Presbytery* or the *Papacy*; and it is such a Supremacy as is only *Political* and *Architectonical* (as it is phrased) that is, *a power paramount over all His Subjects, to see that each sort of such as are under His Government, as well Ecclesiasticks, as others, do their duties in their several and respective stations; and that all things be acted by proper and fit Agents, for preserving both Church and State in tranquility and safety.*

Thus

* *Huic Disciplinæ omnes orbis principes & Monarchæ fasces suos submittere & parere necesse est.* Travers. Disciplin. Ecclesiast. p. 142, 143. *Bishop* White *in his Preface to his Treatise concerning the Sabbath.*

* *And yet our Law attributes much in this particular, and that very highly to the King:* Reges Sacro oleo uncti spiritualis Jurisdictionis sunt capaces. 33 *Edw.* 3. *Ayde de Roy.* 107. *Coke.* Cawdrie's case. *p.* 16.

Thus it appears, that nothing either belonging to Eccleſiaſtical Order or Juriſdiction, is exerciſed by our Kings in their own perſons, according as is fully declared in the following parts of the ſaid Article. Neither does this give any countenance to *Eraſtianiſm*, as ſome have (improperly enough) inferred from thence; herein, as has been deſcribed, is ſeen the Kings Supremacy: *By it, He is the Keeper of both Tables; He governs and regulates Affairs ſo both in Church and State, as may beſt conduce to the preſervation of true Piety to God, and right Juſtice to Men.*

From this power paramount and Supremacy, does deſcend the Biſhops power of exerciſing Juriſdiction; that is, exerciſing the ſame actually; I ſay, actually: for, as our Divines do diſtinguiſh (Archbiſhop *Bramhall's* anſwer to *R. C.* p. 160, 161. Biſhop *Sanderſon de conſcient. obligat. prælect.* 7. *ſect.* 29, 30. Biſhop *Bilſon of Subjection*, par. 3. p. 293. *in octavo.* Mr. *Hooker Eccleſ. Pol. B.* 8. *p.* 213, &c.) *There is an habitual, and there is an actual Juriſdiction; habitual Juriſdiction flows from Epiſcopal Order, actual Juriſdiction*, is *a Right* and liberty granted, opportunity and means afforded of exerciſing and reducing that habit into act; and that, *in foro externo & contentioſo*, after a certain and peculiar manner appointed therein. Thus the King has His Eccleſiaſtical Laws, and His Eccleſiaſtical Courts, and His Eccleſiaſtical Judges*; there are cauſes of ſuch and ſuch a Nature appointed by the King to be judged of by them, in thoſe Courts, according to thoſe Laws*: All perſons within their reſpective Dioceſſes (that is, certain circuits and precincts of Juriſdiction by the King ſet out to each Biſhop, and thoſe in their bounds and limits, either to be contracted,

* See Sir *Joh. Davies* Reports. *Præmunire verſus finem.*

* Many things the Popes formerly have taken upon them to give dire-

tions of, and Enact Canons concerning Episcopal Jurisdiction (under this *salvo*) *in ordine ad Spiritualia*: which things are matters meerly of civil intercourse and commerce betwixt man and man; such are those titles in the Canon Law, *de emptione & venditione, de rerum permutatione, de transactionibus, de depósito*, &c. Testamentary and Matrimonial, and Decimal matters, are amongst these likewise; but although these may better seem to have the aspect of matters Spiritual, yet that Spiritual men have any Jurisdiction therein, must not be imputed to the nature of the things themselves, nor to any superiority that they have over other men by reason of them; but this must be imputed to the Royal bounty and munificence of pious Kings, who, for the Honor of the Church, have so ordered those Causes to be of Ecclesiastical cognizance, and that their Subjects concerned therein, should be obedient to Ecclesiastical Judges therein. Hereupon a Learned Bishop declares, That the Popes Decrees, Judgments and Executions in these Cases, if claimed from Christ as things spiritual, and not granted by *Cæsar*, are but open invasions of Princes Rights, calling those things Spiritual, which indeed be Civil and Temporal. Bishop *Bilson*'s Christian Subjection, *page* 2. Sir *Robert Wiseman*, The Law of Laws, *&c.*

tracted, or extended, as He pleases) are commanded to be subject to them; if they refuse, may be constrained to it. In matters of Appeal, the last complaint is ever to be made to Him; He is the final and ultimate Judge, who by his Delegates appointed thereunto, does redress grievances, answer complaints, and finally and absolutely determine what is brought before Him. The Learned Archbishop and Primate of all *Ireland*, a little before mentioned, has given a full and satisfactory Account of this matter; his words are these, worthy our best observation.

Neither do we draw or derive any Spiritual Jurisdiction from the Crown, but either liberty and power to exercise actually and lawfully upon the Subjects of the Crown that habitual Jurisdiction which we received at our Ordination; or the enlargement of our Jurisdiction objectively, by the Princes referring more causes to the cognizance of the Church, than formerly it had: or lastly, the increase of it subjectively, by their giving to Ecclesiastical Judges, an external coercive power which before they had not. To go yet one step higher, in cases that are indeed Spiritual, or meerly Ecclesiasti-

cal,

cal, such as concern the Doctrine of Faith, or Administration of the Sacraments, or the ordering or degrading of Eccleſiaſtical perſons, Sovereign Princes have (and have only) an Architectonical power, to ſee that Clergy men do their Duties in their proper places; but this power is always moſt properly exerciſed by the advice and miniſtry of Eccleſiaſtical perſons; and ſometimes neceſſary, as in the degradation of one in Holy Orders by Eccleſiaſtical Delegates: Vindication of the Church of *England* from Schiſm, *&c.*

The Exerciſe of Eccleſiaſtical Juriſdiction by Biſhops thus being ſtated and ſettled in the likeneſs that it carries with the other inſtances before ſet down, neither invades nor impairs, but much advances and amplifies the Kings Prerogative: It comes to paſs indeed by this means, that the Kings Supremacy is preſerved firm and ſafe in the Eccleſiaſtical Polity.

I know a great Objection is made againſt all this from hence, becauſe that in Eccleſiaſtical proceedings, Citations, Decrees, and other inſtruments, iſſue forth in the Biſhops, but not in the Kings Name; whence would be infer'd, That ſuch attempts and judiciary proceedings, made, not in the Kings Name, are invaſive on the Royal Prerogative. In order to the Anſwering of this Objection, let it be obſerved, That there are two great Offices in the Kingdom of *England*; the one, that of the Lord High Admiral; the other, that of the Lord Warden of the Cinque Ports: Theſe have great influence in foreign parts, upon the Sea, and within the Lands. I before gave you ſome intimation of their diſtinct juriſdiction, and manner of juridical proceedings, different from the Courts of the Common

Law:

Law: Both the jurisdictions of these two great Officers are ample and authoritative, yet both the Lord Admiral, and the Lord Warden of the Cinque Ports, do send forth Writs in their own Names, and they do it (sayes Dr. *Cowell in verbo, Court.*) as the Bishops hold their Courts by the Kings Authority (*virtute Magistratus sui*) In the High Court of the Earl Marshal the same practice is observed. In the Universities, Processes, and Writs, issue forth in the Chancellor, Vice-chancellor, or their Commissaries Name. Will any now presume to challenge any of these jurisdictions for invading the Kings Prerogative? Will any dare to say, That they pare off some rights, or pluck some flowers from the Kings Imperial Crown? I suppose not. How comes it to pass then, that the Bishops jurisdiction does? Whatsoever may be alledged in defence of the other, may be said (and it may be something more too) in justification of this: And know moreover, That proceedings in these Temporal distinct jurisdictions go much further upon the persons of men, than those of any Ecclesiastical Court does, even to the imprisoning of them, and in all of them (except that of the University) to the inflicting of capital punishments. And it deserves our further observing, what the great Lawyer Sir *Edward Coke* sayes touching this very thing. Albeit the proceedings and process in the Ecclesiastical Courts be in the Name of the Bishops, &c. It followeth not therefore, that either the Court is not the Kings, or that the Law whereby they proceed, is not the Kings Law; for taking one example for many, every Leet and View of franck pledge holden by a subject, is kept in the Lords Name, and yet it is the Kings Court, and all

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the proceedings therein are directed by the Kings Laws; and many ſubjects in *England* have and hold Courts of Record, and other Courts, and yet all their proceedings be according to the Kings Laws and cuſtoms of the Realm, *De jure Regis Eccleſ. p.* 39. The Learned Biſhop *Sanderſon* has convincingly demonſtrated, That Citations and Decrees in the Biſhops Name, no way encroacheth on the Kings Authority; and that they who urge the contrary, have this meaning, rather to do the Biſhops hurt, than the King ſervice, and that their affections (ſo far as by what is viſible we are able to judge) are much what alike towards both: *His Book called Epiſcopacy not prejudicial to Regal power, p.* 3, 4. Biſhops proceedings in Eccleſiaſtical Courts under the Name, Stile, and Seal of the Biſhop. See this largely diſcuſſed and declared to be warrantable by Law, by my Lord *Coke*'s *comment on the Statute of Marriage*, 32 Hen. 8. p. 685, 686, 687.

But this Objection is taken up again, and urged with new force from hence; That in the Firſt year of King *Edward* the Sixth, it was by Statute Enacted, That the Biſhops ſhould make their proceſſes in the Kings Name, and that their Seals ſhould be the Kings Arms. This Statute, ſayes Mr. *Raſtall*, was repealed 1 Mariæ 1. *And that Statute not being revived by Queen* Elizabeth *in her Reign, all proceeded well enough without danger: But in the firſt Parliament of King* James, *there paſſed an Act for continuing and reviving divers Statutes, and for repealing of ſome others*, 1 Jacob. *c.* 25. *Into the body whereof a clauſe was cunningly conveyed, for the repealing of that Statute of the Reign of Queen* Mary, *by which King* Edward's *ſtood repealed:* Upon this account it

was,

was, that a little before our late turbulent confusions in *England*, this very thing was urged against the Bishops, and their proceedings were declared to be bold usurpations, and encroachments on the Prerogative Royal, and violations of the Law.

But as it is usual, where men are prepossessed against any thing, they are apt to run into many mistakes about the same: It happened so in this very matter; Much noise was raised, much stir made hereupon by the Anti-prelatical party; as if the Bishops who had given themselves out to be the most zealous assertors, were indeed become the onely dangerous impugners of the Kings Prerogative: That now they were deprehended in the very design, and therefore must needs fall, having no plea to make for themselves, and having the mischief of their own visible and illegal actings witnessing against them. At this rate, their Adversaries vaunted, and fore-judged them; and no doubt, (as matters went in those times) the severest animadversion that could have followed hereupon, would have been made, if further proceedings therein had not been seasonably prevented by the wisdom of a pious and prudent Prince.

For the Blessed King *Charles* the First, having been made acquainted, what advantage these forward and busie people were designing to make hereof, to the overthrow of His Ecclesiastical Courts, and the Bishops His Judges in them. He did (as Dr. *Heylin* reports in the life of Archbishop *Laud*, p. 342.) call together in the year 1637, the two Lords Chief Justices, the Lord Chief Baron, and the rest of the Judges and Barons, and propounds to them these three following particulars to be

be certified of. 1. Whether proceſſes may not iſſue out of the Eccleſiaſtical Courts in the Name of the Biſhops. 2. Whether a Patent under the Great Seal be neceſſary for the keeping of Eccleſiaſtical Courts, and enabling Citations, Suſpenſions, Excommunications, and other cenſures of the Church. 3. Whether Citations ought to be in the Kings Name, and under His Seal of Arms: And the like for Inſtitutions and Inductions to Benefices, and corrections of Eccleſiaſtical Offences: And the like for Viſitations, whether an expreſs Commiſſion or Patent under the Great Seal of *England* were requiſite?

To which three Propoſals, the ſaid Judges unanimouſly on the Firſt of *July* in the fore-mentioned year concurred, and certified under their Hands: By Anſwering to the Firſt thing propounded, affirmatively; and to the other two, negatively: And that the fore-mentioned Statute of *Edward* the Sixth, is not now in force: Whereupon, the King iſſues out His Proclamation, wherein having firſt taxed the libellous Books and Pamphlets, publiſhed againſt the Biſhops; and after a recital made of theſe proceedings, He concludes the Proclamation thus—*That His Majeſtie thought good, with the advice of His Council, that a publick Declaration of theſe the opinions of His Reverend and Learned Judges, being agreeable to the judgement and reſolution of former times, ſhould be made known to all His Subjects, as well to vindicate the legal proceedings of His Eccleſiaſtical Courts, and Miniſters, from the unjuſt and ſcandalous imputation of invading or intrenching on His Royal Prerogative, as to ſettle the minds, and ſtop the mouths of all unquiet ſpirits: That for the future, they preſume not to cenſure His Eccleſiaſtical Courts, or*

Miniſters, in theſe their juſt and warranted proceedings. And hereof His Majeſty admoniſheth all His ſubjects to take warning, as they will Anſwer the contrary at their peril, &c. *

* *Reſolutions unanimouſly given by all the Judges and the Barons of the Exchequer (ſaith my Lord* Coke) *are for matters of Law of Higheſt Authority, next unto the Court of Parliament.* *Sir* Edward Coke 2 *Inſtit.* p. 618.

But ſome mens minds will not be ſatisfied with any thing of this nature, yet are willing to embrace what is fortified with Parliamentary Authority. Both therefore to gratifie them, and more throughly to confirm the matter in hand, we have alſo this Parliamentary Authority to offer unto them: For although by an Act of Parliament in the Seventeenth year of King *Charles* the Firſt, all jurisdiction Eccleſiaſtical was quite abrogated and annulled, (I ſpeak in reſpect of *England*; for here in *Ireland* no ſuch Act was ever made) nevertheleſs at the happy Reſtauration of our Gracious Sovereign, that now is, *viz. Anno Dom.* 1660. The ſaid Act of the 17. of King *Charles* the Firſt is repealed; and that was *Anno decimo tertio* Caroli *Secundi*; and in that Act of Repeal it is thus declared—That the ſaid Act of the 17. of King *Charles* the Firſt notwithſtanding. *All Archbiſhops, Biſhops, and all others exerciſing Eccleſiaſtical jurisdiction, may proceed, determine, ſentence, execute and exerciſe all manner of Eccleſiaſtical juriſdiction, and all cenſures and coercions appertaining and belonging to the ſame, before the making of the Act before recited, in all cauſes and matters belonging to Eccleſiaſtical jurisdiction, according to the Kings Majeſties Eccleſiaſtical Laws, uſed and practiſed in this Realm, in as ample manner & form, as they did & might lawfully have done before the making of the ſaid Act.*

This Act is indeed attended with three Proviſoes. The firſt is concerning the High-commiſſion Court, which is excepted from having any revival, or force,

or

or authority given to it, or to the erection of any other ſuch like Court by commiſſion hereby. The ſecond Proviſo is concerning the Oath, called the Oath *ex Officio*, which is excepted againſt, and forbid to be tendred, or adminiſtred unto any in the exerciſing of any Spiritual jurisdiction. The third Proviſo is, to limit and confine the power of Eccleſiaſtical Judges in all their proceedings, to what was, and by Law might be uſed before the year 1639. (obſerve the year mentioned to be 1639, which plainly includes, allows, and confirms King *Charles* the Firſt His Proclamation, in the year 1637. In this clauſe and branch of this Statute, proviſion is alſo made againſt any confirmation to be given to the Canons, made *Anno* 1640.

Theſe particulars onely excepted, and here provided againſt, all Eccleſiaſtical Juriſdiction, as to it's exſtenſivenēſs in all cauſes of Spiritual cognizance, & over all perſons (of what quality and degree ſoever they be, or in what Office ſoever they are) in thoſe cauſes, is firmly ratified and eſtabliſhed. *Bartolus* his Rule is truly applicable here, *Exceptio firmat Regulam in non-exceptis.*

But let all this be granted (will the Excepters ſay) that proceedings in Eccleſiaſtical Courts againſt private perſons, either in matters of inſtance, or correction, are not entrenching on the Prerogative Royal; yet the caſe is otherwiſe, when ſuch proceedings are bent upon publick Officers, as Mayors, and Sheriffs, &c. becauſe they are veſted with the Kings Authority, and nearly repreſent His Perſon. They are His Miniſters and Diſpenſers of Juſtice, and by ſuch proceedings againſt them, publick affairs might be hindred of their diſpatch, and the

Kings buſineſs not be executed. I Anſwer, (there is no otherwiſe in this caſe) For, if the matter be juſtifiable, that is, if the cauſe any ſuch proceeding is begun upon, do belong to Eccleſiaſtical cognizance, then the Spiritual Juriſdiction in the Biſhops management reaches ſuch publick Officers, as well as others, and that without invading, or in the leaſt violating the Kings Prerogative: If occaſions ſo require, Eccleſiaſtical cenſures may be inflicted on them, as well as on any other of the Kings ſubjects that do offend. And yet the doing of that will not be a cenſuring the King *in Effigie*, as ſome have, with very little reaſon, and but too much paſſion affirmed. Obſerve we what may be done, and adjuged againſt ſuch publick Officers, in the Kings Temporal Courts.

A Mayor and Sheriffs may be impleaded before the Kings Temporal Judges in cauſes Civil. The people of *Waterford* may remember one or two inſtances hereof very lately; when the School-maſter there ſued the Mayor and Sheriffs, before the Lords Juſtices of Aſſize, for detaining the Salary they had contracted to pay him. A Mayor of any City or Corporation, may be arreſted, may, during the time of his Mayoralty, be ſued to an Out-lawry in the Kings Temporal Courts. The Kings Temporal Judges may upon contempts, convent Mayors before them; and occaſion ſo requiring, commit them to priſon. It is not long ſince that a caſe in *Waterford* was coming near this, when in one *Whaley's* cauſe, a Writ of Error was brought from the Court of the Kings Bench: This the Mayor refuſing to obey, and complaint thereof being made to the Court, a Purſuivant was ordered to attach the Mayor,

and

and bring him before the Judges, there to anſwer his contempt; which undoubtedly would have been done, if the Execution of that Order had not been ſeaſonably prevented, by an *Affidavit* made to this effect, That the Mayor did not refuſe to obey the ſaid Writ of Error, but onely deferred the admitting of it, until he ſate judicially in Court; the ſame having been before privately exhibited to him. By this means that proceeding was ſtopped, which elſe would have manifeſted, that the Mayor of *Waterford* is not ſo abſolute, but is indeed under controll, and may be convented and puniſhed by the Kings temporal Judges, without any affront done to the King *in Effigie*, or to his power and authority; which he the ſaid Mayor in his proper ſtation, and within his own Precinct does bear.

And that Sheriffs even while they are in the exerciſe of their Office, may be proceeded againſt in the Kings Temporal Courts, none can be ignorant of, that underſtands the practice of thoſe Courts, and remembers there is ſuch a Court as the Exchequer, or has undergone the Office of a Sheriff: A Sheriff, by the Statute of *Weſtminſter*, 1. *cap.* 9. *Anno tertio Edvardi primi*, for not doing his Duty, and for concealing of Felons, may be fined and impriſoned. One *Bronchard* in Queen *Elizabeths* time being Sheriff, had an Information Exhibited in the Star-chamber againſt him, for returning one that was not choſen a Knight of the Parliament, *Abridgement of the Reports of the Lord* Dyer, 425. A Sheriff of *Barkſhire* was committed to the Fleet, and fined by the Court of *Common Pleas* for unjuſt taking of Fees: *Brownloes Reports*, *ſecond part*, p. 283. I doubt not, but the Learned in the Municipal Laws, are

are able to furniſh out plenty of inſtances of this kind.

Well then, Mayors and Sheriffs may be Impleaded, may be Out-lawed, may be Arreſted, may be Fined, may be Impriſoned in the Kings Temporal Courts, by, from, and before his Temporal Judges: And in all theſe Inſtances, here's no Fining, no Arreſting, no Out-lawing, no Impriſoning, no Attaching the King *in Effigie*, nor any intrenching upon his Authority derived from himſelf to his ſubordinate civil Officers: Here's no hindring the diſpenſing of Juſtice, no obſtructing the Kings buſineſs, nor letting the execution of His Majeſties ſervice in the hands of theſe publick Officers; that is, at all dreaded hereby. And pray, How then comes it to paſs, that the caſe is not the ſame, when in matters of Eccleſiaſtical cognizance, the Kings Eccleſiaſtical Judge in his Eccleſiaſtical Courts proceeds againſt ſuch perſons, by penalties proper and uſually inflicted therein? Is not the Kings Authority in His Eccleſiaſtical Courts in matters belonging to them, as forcible and coercive reſpectively to the manner of proceedings therein, as the ſame Regal Authority is in the temporal Courts in matters belonging to them, and reſpectively to the manner of proceedings therein? The King hath both Juriſdictions united in Him (as has been largely before ſhewed) *Rex habet omnia jura in manu ſua:* It is a Maxim concerning the King, which I read cited from *Bracton, lib. 2. c. 24.** Now all is completed in theſe two Juriſdictions, which although they may be diverſe, yet they are not contrary in him; they are both radically and fundamentally in him, and derivatively only in all Officers and Miniſters of Juſtice in either kind. Is the King then abſolute in the one, and yet limited in

* So it is alſo ſaid, *Rex eſt mixta perſona quia tum Eccleſiaſticam tum temporalem Juriſdictionem habet.* 11 Hen. 7. 12.

in the other? leſs powerful in his Eccleſiaſtical, than in his civil Supremacy? That is, Supreme, and not Supreme: Thus to ſay, is either to contradict ones ſelf, or neither better nor worſe than plainly to derogate from the Kings Eccleſiaſtical Supremacy; and to give him the Name, but to deny the Thing: It incurs the danger of implied, if not direct diſowning Regal Supremacy in all cauſes Eccleſiaſtical, and over all perſons that may be concerned therein. It is plainly to make a *magis* and *minus* in that Authority, which will not admit any ſuch thing *, it being alwayes equally and alike forcible in all; that is, chief and ſupreme in both Adminiſtrations, Eccleſiaſtical and Civil. Let's ſtate a Caſe or two for better illuſtration ſake.

* *Regia dignitas eſt indiviſibilis.* Coke 4 Inſtit. c. 48.

A Suit is commenced in the Eccleſiaſtical Court, before the Biſhop the Kings Eccleſiaſtical Judge preſiding therein, concerning a matter (we will ſuppoſe) not properly cognizable there: The Defendant hereupon ſues out a Prohibition, which he exhibits before the Biſhop, the Eccleſiaſtical Judge. This the Biſhop refuſes to admit, and notwithſtanding the ſame, proceeds in the cauſe. Complaint hereof being made to the Court granting the ſaid Prohibition, an Attachment is awarded againſt the Eccleſiaſtical Judge *: He is apprehended, and brought to anſwer for his contempt, in refuſing to obey the Kings Prohibition. I queſtion not now, but to have a free concurrency of every mans vote, allowing this to be very legal and juſt, becauſe the Kings Authority in the Temporal Court, and in ſuch matters as belong thereunto, is, in this caſe, contemned and diſobeyed, and therefore ought to be anſwered for by the contemners of it.

* It may be ſo, and iſſues out of the Chancery, although the Prohibition came from the King's Bench, or Common Pleas. *Lord Coke. cap. 8. 4 Inſtit.*

Now

Now invert the caſe a little: A Biſhop, the Kings Eccleſiaſtical Judge, convents before him in the Kings Eccleſiaſtical Court, a perſon bearing ſome civil Office, ſuppoſe the Mayor of a Corporation, or ſome Sheriff of a County, perhaps at the inſtance of a party, perhaps in a matter of correction. This Mayor or Sheriff refuſes to appear upon the Summoning; or appearing, refuſes to obey ſuch Injunctions as are given him by the Biſhop; and for his contempt therein, has a cenſure inflicted on him. Tell me, now, ought not this caſe be allowed as legal and juſt as the other? The reaſon is certainly the ſame, becauſe the Kings Authority in his Eccleſiaſtical Court and matters belonging thereunto is contemned, and diſobeyed, and therefore ought to be anſwered for by the contemners of it; and if the reaſon be the ſame, partiality or prejudice may make a diſparity; but in the true nature of the thing there is none at all: For the Kings Authority being equally committed to both ſpiritual and temporal Judge, in the concernancy of ſuch things as belong to each; the violaters and contemners of either (be they of what quality and condition ſoever) are juſtly puniſhable by thoſe in either Juriſdiction, who are veſted with Authority reſpectively for executing the ſame.

But there are thoſe who will not be ſatisfied with all this; and that they may not ſeem to be without ſome grounds, they are not without their Objections againſt it: It will therefore be very pertinent to the preſent deſign, to free our former Aſſertion from ſuch Inferences as hence may be made contrary to it. The Aſſertion was this, That the Exerciſe of Epiſcopal Juriſdiction over perſons in Office of civil

power

power and truſt, is not any way intrenching upon, or infringing his Majeſties Prerogative Royal. To this, there is firſt oppoſed that Branch and Article of the Statute of *Clarendon*, of which we find mention made by *Matth. Paris*, in his Hiſtory of the Reign of King *Henry* the ſecond, the *chapter* that begins thus [*Anno Domini* 1164] in theſe words, *Nullus qui de Rege tenet in capite, nec aliquis Dominicorum Miniſtrorum ejus Excommunicetur, nec aliquis eorum terra ſub interdicto ponatur, niſi prius Dominus Rex, ſi in Regno fuerit, convenit. vel juſtitiarius ejus, ſi fuerit extra Regnum, ut rectum de eo faciat: Et ita, ut quod pertinebat ad Regis Curiam ibi terminetur: Et de eo quod ſpectat ad Curiam Eccleſiaſticam ad eandem mittatur, ut ibidem terminetur.*

I did a little before, and do now ingenuously acknowledge, That the King of *England* may by His Prerogative Royal, when and to whom he pleaſes, give exemption from Eccleſiaſtical Juriſdiction: But that He has done it to perſons in ſubordinate Offices of civil power, is not proved from this inſtance; all the diſpute will be, who are comprehended under this expreſſion (*Dominicorum Miniſtrorum*) what kind, and ſort of perſons are pointed at thereby: And here I ſay plainly, that perſons in ſubordinate Offices of civil power, are not theſe *Dominici Miniſtri Regis*. My Lord *Cokes* Expoſition hereof, is my warrantry and authority for ſaying ſo.* The place I refer to in the Margent, will inform us, That *Dominici Miniſtri Regis*, are ſuch as belonged to the Kings Houſhold, as the *Tenentes de Capite*, are ſuch, as held of the King by *Grand Serjeanty*, and *Knights ſervice*, and were to give their attendance on the Kings perſon whenſoever required thereto. To theſe

* 2 *p. Inſtit.* Expoſition on the 12*th* Article of the Statute called, *Articuli Cleri.* 9 Ed. 2.

pendant upon the See of *Rome*; and ſo it came to paſs, that the ſpiritual Court, or Court Chriſtian, was reputed *aliud forum a foro Regio*; and King *Henry* the third experienced many attempts made to limit, and reſtrain his Prerogative, inſomuch, as with great inſolence, his Biſhops threatned to Excommunicate Him *. They were propt up and ſupported by Papal Authority, and after ſuch a daring and confident manner were they inſpirited from *Rome*, as to look upon themſelves in their actings utterly independent on the Crown; and then it was chiefly, that by the greatneſs and prevalency of *Boniface* Archbiſhop of *Canterbury*, Uncle to *Elianor* then Queen of *England*, that many Provincial conſtitutions were Enacted concerning matters of meer temporal cognizance; and encroachments were daily made on the ſecular Courts, and Excommunications, and other cenſures were thundred out againſt the Kings Bayliffs and Officers: But why? only, becauſe they oppoſed them in the execution of ſuch conſtitutions. Hereupon proceeded theſe prohibitions to the Biſhops; upon theſe grounds they were commanded not to cenſure ſuch Officers and Bayliffs; that is, for ſo executing their Offices, and diſcharging their Allegiance, and Duty to their Princes. Here was no intent to reſtrain the Biſhops in the right exerciſe of their Juriſdiction touching ſuch matters as truly belonged to it, but to keep them from exceeding their own bounds, and meddling in matters which were not cognizable before them.

* Sir *Richard Bakers* Chronicle, the Reign of *Hen.* 3d.

And thus much appears plainly from that clauſe in the very Record it ſelf (ſet down by this Author in the place before mentioned) *Si vero Præpoſitus noſter aliquid deliquerit contra dignitatem Eccleſiaſticam*,

cam, faciemus eum juri parere postquam delictum fuerit nobis denuntiatum, pro quo interim eam ab eis faciatis. So that here is no more than what the ordinary Writs of prohibition do import. The King requires to be informed of the true state of that cause his Officers are convented upon, so he requires to be in the case of any of his other Subjects, upon address made to him concerning the same. If the matter be found to belong indeed to Ecclesiastical cognizance, the parties concerned therein be they in any office or place of power (so as belongs to the present case) they must be subject thereunto: But if the matter do not so belong, the King will rescue them thence, and shield them with his Regal protection, and not suffer an incompetent Court to have any authority over them.

But see the ill luck that this Author has in alledging this Record, for whilst he makes a shew of advancing the Kings Prerogative in one kind, he does really depress it in another; I cannot contain my self from calling upon the Reader, and desiring him to observe, and then wonder, that any one should insist upon this Writ, as any way advantagious to the thing he bestirs himself to make good thereby, when it is said in the very body of it in relation to the Bishops—*Non attendentes quod ab ordinariis locorum non possint Excommunicari Ballivi nostri, nisi de Excessibus eorum prius fuerit nobis relata querela propter sedis Apostolicæ nobis indultum privilegium.* I wish the Reader would be at the pains to consult the very Record, set down by this Author in the place of his Book, referred to before.

And

are able to furnish out plenty of instances of this kind.

Well then, Mayors and Sheriffs may be Impleaded, may be Out-lawed, may be Arrested, may be Fined, may be Imprisoned in the Kings Temporal Courts, by, from, and before his Temporal Judges: And in all these Inst ctions, here's no Fining, no Arresting, no Out-lawing, no Imprisoning, no Attaching the King *in Effigie*, nor any intrenching upon his Authority derived from himself to his subordinate civil Officers: Here's no hindring the dispensing of Justice, no obstructing the Kings business, nor letting the execution of His Majesties service in the hands of these publick Officers; that is, at all dreaded hereby. And pray, How then comes it to pass, that the case is not the same, when in matters of Ecclesiastical cognizance, the Kings Ecclesiastical Judge in his Ecclesiastical Courts proceeds against such persons, by penalties proper and usually inflicted therein? Is not the Kings Authority in His Ecclesiastical Courts in matters belonging to them, as forcible and coercive respectively to the manner of proceedings therein, as the same Regal Authority is in the temporal Courts in matters belonging to them, and respectively to the manner of proceedings therein? The King hath both Jurisdictions united in Him (as has been largely before shewed) *Rex habet omnia jura in manu sua:* It is a Maxim concerning the King, which I read cited from *Bracton, lib.* 2. *c.*24.* Now all is completed in these two Jurisdictions, which although they may be diverse, yet they are not contrary in him; they are both radically and fundamentally in him, and derivatively only in all Officers and Ministers of Justice in either kind. Is the King then absolute in the one, and yet limited

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* So it is also said, *Rex est mixta persona quia tum Ecclesiasticam tum temporalem Jurisdictionem habet.* 11 Hen. 7. 12.

in the other? less powerful in his Ecclesiastical, than in his civil Supremacy? That is, Supreme, and not Supreme: Thus to say, is either to contradict ones self, or neither better nor worse than plainly to derogate from the Kings Ecclesiastical Supremacy; and to give him the Name, but to deny the Thing: It incurs the danger of implied, if not direct disowning Regal Supremacy in all causes Ecclesiastical, and over all persons that may be concerned therein. It is plainly to make a *magis* and *minus* in that Authority, which will not admit any such thing *, it being alwayes equally and alike forcible in all; that is, chief and supreme in both Administrations, Ecclesiastical and Civil. Let's state a Case or two for better illustration sake.

* *Regia dignitas est individuabilis.* Coke 4 Instit. c. 48.

A Suit is commenced in the Ecclesiastical Court, before the Bishop the Kings Ecclesiastical Judge presiding therein, concerning a matter (we will suppose) not properly cognizable there: The Defendant hereupon sues out a Prohibition, which he exhibits before the Bishop, the Ecclesiastical Judge. This the Bishop refuses to admit, and notwithstanding the same, proceeds in the cause. Complaint hereof being made to the Court granting the said Prohibition, an Attachment is awarded against the Ecclesiastical Judge *: He is apprehended, and brought to answer for his contempt, in refusing to obey the Kings Prohibition. I question not now, but to have a free concurrency of every mans vote, allowing this to be very legal and just, because the Kings Authority in the Temporal Court, and in such matters as belong thereunto, is, in this case, contemned and disobeyed, and therefore ought to be answered for by the contemners of it.

* It may be so, and issues out of the Chancery, although the Prohibition came from the King's Bench, or Common Pleas. *Lord Coke. cap. 8. 4 Instit.*

Now

Now invert the case a little: A Bishop, the Kings Ecclesiastical Judge, convents before him in the Kings Ecclesiastical Court, a person bearing some civil Office, suppose the Mayor of a Corporation, or some Sheriff of a County, perhaps at the instance of a party, perhaps in a matter of correction. This Mayor or Sheriff refuses to appear upon the Summoning; or appearing, refuses to obey such Injunctions as are given him by the Bishop; and for his contempt therein, has a censure inflicted on him. Tell me, now, ought not this case be allowed as legal and just as the other? The reason is certainly the same, because the Kings Authority in his Ecclesiastical Court and matters belonging thereunto is contemned, and disobeyed, and therefore ought to be answered for by the contemners of it; and if the reason be the same, partiality or prejudice may make a disparity; but in the true nature of the thing there is none at all: For the Kings Authority being equally committed to both spiritual and temporal Judge, in the concernancy of such things as belong to each; the violaters and contemners of either (be they of what quality and condition soever) are justly punishable by those in either Jurisdiction, who are vested with Authority respectively for executing the same.

But there are those who will not be satified with all this; and that they may not seem to be without some grounds, they are not without their Objections against it: It will therefore be very pertinent to the present design, to free our former Assertion from such Inferences as hence may be made contrary to it. The Assertion was this, That the Exercise of Episcopal Jurisdiction over persons in Office of civil

power

power and trust, is not any way intrenching upon, or infringing his Majesties Prerogative Royal. To this, there is first opposed that Branch and Article of the Statute of *Clarendon*, of which we find mention made by *Matth. Paris*, in his History of the Reign of King *Henry* the second, the chapter that begins thus [*Anno Domini* 1164.] in these words, *Nullus qui de Rege tenet in capite, nec aliquis Dominicorum Ministrorum ejus Excommunicetur, nec dicujus corum terra sub interdicto ponatur, nisi prius Dominus Rex, si in Regno fuerit, vocatus sit, vel Justiciarius ejus, si fuerit extra Regnum, ut rectum de eo faciat. Et ita, ut quod pertinebat ad Regis Curiam ibi terminetur. Et de eo quod spectat ad Curiam Ecclesiasticam ad eandem mittatur, ut ibidem terminetur.* I did a little before, and do now ingenuously acknowledge, That the King of *England* may by His Prerogative Royal, when and to whom he pleases, give exemption from Ecclesiastical Jurisdiction. But that He has done it to persons in subordinate Offices of civil power, is not proved from this instance: all the dispute will be, who are comprehended under this expression (*Dominicorum Ministrorum*) what kind, and sort of persons are pointed at thereby. And here I say plainly, that persons in subordinate Offices of civil power, are not these *Dominici Ministri Regis*. My Lord *Cokes* Exposition hereof, is my warranty and authority for saying so. The place I refer to in the Margent, will inform us, That *Dominici Ministri Regis*, are such as belonged to the Kings Houshold, as the *Tenuit de Capite*, are such, as held of the King by *Grand Serjeanty*, and *Knights service*, and were to give their attendance on the Kings person whensoever required thereto. To these

* 2 p. *Instit.* Exposition on the 12th Article of the Statute called, *Articuli Cleri.* 9 Ed. 2.

is this exemption granted; but note here withall, that the exemption in this Statute is not absolute, but proceeds with a reserve and a limitation; that if the cause, any such person is to be convented upon, be judged by the King, or His Justice in the Kings absence to belong to the *Ecclesiastical Court*, thither both cause and person must be sent, and that person (notwithstanding such exemption) be proceeded against, and that cause there be determined. That which is in the principal aim and provision of this Statute, is this, that the King be made acquainted before any censures be inflicted on any account, upon any of His servants and attendants.

But there is something further objected (and that supposed to be more forcible) by a late Author, who has put himself to the expence of a great deal of labour and industry, in searching out of some presidents, and (as he conceives) warrantable Authorities whereby to evince the limiting and binding up of Episcopal Jurisdiction, in respect of persons vested with seculat power, and command; namely, that such persons are by peculiar (and that Regal) exemption freed from all coercive authority thereof. Among other things produced by him, I pitch especially on two, which appear to have the greatest stress laid upon them. The one is an ancient Record in the time of King *Henry* the third, of this Tenor. The Provost of *Bourdeaux* had been Excommunicated by the Archbishop of *Bourdeaux* without the Kings Licence; whereupon, King *Henry* writes to that Archbishop, and sharply expostulates with him, *That he had Excommunicated His Provost without his Licence, and commands him forthwith to absolve him.* Upon the like account, saith the same

Author,

Author, King *Edward* the First, *Clauſ.* 8. *Ed.* 1. *Dorſ.* 6. and *Clauſ.* 31. *Ed.* 1. *Dorſ.* 11. iſſued out Writs to his Biſhops, commanding them not to Excommunicate his Bayliffs and Officers (and abſolve them, if Excommunicated) without his previous Licence and Order. Mr. *Pryn*'s Animadverſions, *&c.* on the fourth part of Sir *Ed. Coke's Inſtit.* p. 464.

At a diſtant view of theſe inſtances produced, they may ſeem to have a goodly appearance, and to ſerve well the end intended in their production; but come we to a nearer inſpection, and more narrow examination thereof, and they will be found weak and uſeleſs for any ſuch purpoſe. Let it be granted, that by Bayliffs are underſtood Sheriffs, and other Officers in ſecular Authority, ſuch as have the Government in Corporations, as Mayors, Portrives *, *&c.* Yet I make no doubt to affirm, that ſtill the former Aſſertion ſtands firm and unſhaken. To make good this, a little recourſe muſt be had to other Hiſtorical occurrences in the Reigns of theſe two Kings, *Henry* the third, and his ſon and ſucceſſor *Edward* 1. For theſe will give us the beſt light and guidance to diſcover the grounds wherefore, and and the matters wherein, theſe prohibitory Writs iſſued out, and the ends aimed at by them. It has been ſaid, that that Age was the very *Criſis* of Regal, and Papal power in the Kingdom of *England*; then was the ſharpeſt conflict betwixt both, and thence forward the Papal power began to dwindle and decline: And as a diſeaſe makes the ſharpeſt aſſault upon Nature, immediately before it begins to abate; ſo did the Papal power at this time before its declenſion. The exerciſe of Eccleſiaſtical Juriſdiction, did then *de facto* derive from, and was dependant

* *Gloſſar* added to that Edition of *Mat. Paris*, printed at *London*, 1640.

pendant upon the See of *Rome*; and ſo it came to paſs, that the ſpiritual Court, or Court Chriſtian, was reputed *aliud forum a foro Regio*; and King *Henry* the third experienced many attempts made to limit, and reſtrain his Prerogative, inſomuch, as with great inſolence, his Biſhops threatned to Excommunicate Him *. They were propt up and ſupported by Papal Authority, and after ſuch a daring and confident manner were they inſpirited from *Rome*, as to look upon themſelves in their actings utterly independent on the Crown; and then it was chiefly, that by the greatneſs and prevalency of *Boniface* Archbiſhop of *Canterbury*, Uncle to *Elianor* then Queen of *England*, that many Provincial conſtitutions were Enacted concerning matters of meer temporal cognizance; and encroachments were daily made on the ſecular Courts, and Excommunications, and other cenſures were thundred out againſt the Kings Bayliffs and Officers: But why? only, becauſe they oppoſed them in the execution of ſuch conſtitutions. Hereupon proceeded theſe prohibitions to the Biſhops; upon theſe grounds they were commanded not to cenſure ſuch Officers and Bayliffs; that is, for ſo executing their Offices, and diſcharging their Allegiance, and Duty to their Princes. Here was no intent to reſtrain the Biſhops in the right exerciſe of their Juriſdiction touching ſuch matters as truly belonged to it, but to keep them from exceeding their own bounds, and medling in matters which were not cognizable before them.

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* Sir *Richard Bakers* Chronicle, the Reign of *Hen.* 3d.

cam, faciemus eum juri parere, postquam delictum fuerit nobis denuntiatum, pro quo interim eum ab hoc faciatis. So that here is no more than what the ordinary Writs of prohibition do import. The King requires to be informed of the true state of that cause his Officers are convented upon, so he requires to be in the case of any of his other Subjects, upon address made to him concerning the same. If the matter be found to belong indeed to Ecclesiastical cognizance, the parties concerned therein, be they in any office or place of power (so as belongs to the present case) they must be subject thereunto: But if the matter do not so belong, the King will rescue them thence, and shield them with his Regal protection, and not suffer an incompetent Court to have any authority over them.

But, see the ill luck that this Author has in alledging this Record, for whilst he makes a shew of advancing the Kings Prerogative in one kind, he does really depress it in another; I cannot contain my self from calling upon the Reader, and desiring him to observe, and then wonder, that any one should insist upon this Writ, as any way advantagious to the thing he bestirs himself to make good thereby, when it is said in the very body of it in relation to the Bishops — *Non attendentes quod ab ordinariis locorum non possint Excommunicari Ballivi nostri, nisi de Excessibus eorum prius fuerit nobis relata querela propter sedis Apostolicæ nobis indultum privilegium.* I wish the Reader would be at the pains to consult the very Record, set down by this Author in the place of his Book, referred to before.

And

And I pray, let any one consider this advisedly, and then tell me, What right does that man to the Crown of *England*, that whil'st he appears mightily busied in asserting the Supremacy thereof, will yet make it dependant on Papal Authority? Is it come to this, That the King of *England* must ask leave of the Pope to put any restraint upon his own Bishops? The production of this Record makes better to gratifie the Papists, than to prove the thing it is produced for; though, in truth, neither the one, nor the other, gets any real advantage hereby. Historians observe many miscarriages in this Kings Government, during his long Reign of fifty and six years; among which, this application which he made to *Rome*, was not the least: The most knowing of his Subjects were much displeased thereat; for, as one Historian informs us * (and he a Votary to the Pope) in another case hapning but two years before, *viz.* in the 36*th* year of this Kings Reign, and which this passage must undoubtedly refer to) *Non sine redargutione peritorum hæc fecit Dominus Rex quod scilicet conquestus fuerit super hæc Domino Papæ:* The Pope to be sure was forward enough to engage himself in the concerns of Princes, and so would make himself more officious to gratifie the King than was needful; whereas the provision which by the Laws was made against any such encroachments, and the Kings own Regal power to put the same Laws in execution, would have given him better relief, than any indult or dispensation from the Pope could do.

* *Mat. Paris.* Anno 1250. p. 777.

Well, upon the Reasons before specified, prohibitions issued out from King *Henry*, to keep the Bishops from censuring his Officers; but notwithstanding

ing them, ſtill they would be encroaching on the Kings Rights in his temporal Courts, and ſo they continued to the time of King *Edward* the firſt, the ſon and immediate ſucceſſor of the former King; and thence proceeded the iſſuing of that Kings prohibitory mandates, *Requiring and commanding the Biſhops not to Excommunicate his Bayliffs and Officers without his previous Licence and Order:* That is (as by what is to be collected from the ſtate of affairs in theſe times) until the King fully underſtood the nature of the cauſe theſe Officers and Bayliffs were convented upon; for, as I declared before, they were often cenſured and excommunicated, becauſe they oppoſed the Popiſh encroachments on the Kings temporal Rights; therefore the King would underſtand the true grounds of ſuch proceedings, that if the matter were of civil concernment, his Officers might be freed from ſuch vexatious and unjuſt proſecutions; but if it appeared to be of Eccleſiaſtical cognizance, they were then delivered up to the Juriſdiction thereof.

This, I conceive, to be the very genuine and true meaning hereof, for theſe reaſons; firſt, becauſe it is conſonant to the end and purport of other Writs of the like nature; the Author has not recited theſe Records at large, which if he had done, very probably ſomething plainly directing to this conception might have been found therein. Moreover, by the Statute called *prohibitio formata de Statuto Articuli Cleri* *, made the beginning of King *Edwards* Reign: The ſpiritual Juriſdiction is not at all reſtrained ſubjectively, that is, reſpectively to perſons being of this or that condition or quality; but only objectively as to cauſes, namely, ſuch as had been uſurped

* Which Statute had reference to certain Articles of the Clergy exhibited in Parliament, held *Anno* 51. *Hen.* 3.

usurped before by the Spiritual Courts. Lastly, this is made good also from approved practice in this very Kings Reign, as will appear by this remarkable story that now follows.

Thomas, *the Noble Earl of* Lancaster, *had to wife* Alice, *only Daughter and Heir of* Henry *Earl of* Lincoln; *at the same time,* John *Earl of* Warren *was married to King* Edward *the first his Neece; yet the said Earl* Warren *by great force, and strong hand, caused the said* Alice *Countess of* Lancaster *to be fetched from the Earl of* Lancasters *house in* Canford *in* Dorsetshire, *and in great pomp and bravery (in despight of the Earl of* Lancaster) *to be brought to him to his Castle of* Rye-gate *in* Surrey, *where they lived in open adowtry.* John Langton *was then Bishop of* Chichester, *and Chancellor of* England; *and being a man of a brave spirit, and fearing not the face of great men, according to his office and duty, he called the said Earl* Warren *in question, for the said shameful and open Adultery, and by Ecclesiastical censures Excommunicated him for the same, as he well deserved,* saies my Lord *Coke*, who reports this Story *.

* Exposition on the Statute called, *Articuli super Chartas Anno* 28 Edward 1. page 573.

This happed about the 29*th* year of King *Edw.* 1. and surely is an instance proper to inform us what the right state of Ecclesiastical Jurisdiction was then; and that supposing the matter to be indeed belonging to the Ecclesiastical Tribunal, no person of greatest dignity under the King, nor any others in civil office and place of power are exempted from it, nor did the Kings prohibitory Writs give any such exemption.

Thus it was while the Ecclesiastical Jurisdiction did *de facto* stand divided from the Crown, and before our Kings re-assumed their Rights in the same;

but

But forasmuch as now there is an entire Union of both jurisdictions in one supream King and Governour: the exercise of the Ecclesiastical jurisdiction is certainly at least as extensive, as full, and as Universal now as it was before. And whereas the obtaining and having the Kings *leave and licence* to the inflicting any censures on His Bayliffs and Officers, is mentioned in those prohibitory Writs, whence it may be inferred, that admitting, Ecclesiastical judges may proceed against, and censure (occasion so requiring it) the Kings Officers in civil powers; yet the Kings *leave and order* so to do, must first be had and obtained: To this, I say, that now by the right constitution of Ecclesiastical jurisdiction, and as the exercise thereof is derived from the Crown, the Kings *leave and licence* in the whole procedure thereof, is implicitely indeed, yet as truly and certainly had and obtained, as if a particular and express mandate from the King were issued out upon each several cause, civil or criminal that belongs to the cognizance thereof: The Ecclesiastical judge acts by a power as immediately derived from the King, as any Temporal Judge does: The Bishop is as amply and compleatly Commissionated for the Exercise of Ecclesiastical jurisdiction, both *subjectively, and objectively, in foro Externo & contentioso* (which Commission passes in His Majesties Letters Patents for Restauration of the Temporalities) as any other Temporal Judge in any of the Kings Temporal Courts: And upon this account it is as truly affirmed, That nothing is done in the Ecclesiastical Court *Rege inconsulto*, as the same is said concerning the Temporal Court. *Habet Rex diversas Curias, in quibus diversæ Actiones terminan-*

tur, ſayes *Bracton*, and he lived in one of theſe Kings Reign, *viz.* that of King *Henry* 3d, whence Sir *Edward Coke* draws this concluſion, *That the King hath committed and diſtributed all his whole power of Judicature to ſeveral Courts of Juſtice*; and in this he refers to Eccleſiaſtical Courts as well as Temporal: And from the Statute 24 *Hen.* 8. *cap.* 2. he declares thus, *That the Laws Eccleſiaſtical and Temporal, were, and yet are adminiſtred, adjudged and executed by ſundry Judges**, &c. Hence is that ſaying, *That the King does judge by his Judges.* Thus in matters of Eccleſiaſtical cognizance, the King judges by His Eccleſiaſtical Judges; and whatſoever perſons are any way concerned therein, and impleaded in the Eccleſiaſtical Court, the King by His Eccleſiaſtical Judges has the hearing of them, and determining, in their cauſes, and *His leave and licence* goes along therewith.

* His Juriſdiction of Courts, *cap.* 7. *p.* 70.

By vertue of being thus deputed and commiſſionated by the King, the Biſhops have and execute an exterior Juriſdiction, which is as extenſive and univerſal over all perſons in cauſes belonging thereunto, as is the Temporal Juriſdiction, in the management of the Temporal Judges; and where the Kings Commiſſion is, there is His power, and there is His conſent: And where that Commiſſion does not abridge and limit, there all proceedings made by power from it, have aſſuredly the Kings leave and licence in conjunction with them.

But if ſtill, notwithſtanding all that has been ſaid, it be perſiſted in, that there is a diſparity of power in the two Juriſdictions as to the extenſiveneſs thereof *ſubjectively*, ſo as that the Eccleſiaſtical Judge in his way of proceedings may not, but the

Temporal

Temporal Judge in his way may proceed, against any civil Officers, as Mayors and Sheriffs, &c. found Delinquents in any kind. I demand, How does it appear to be so? What Law is there that constitutes this Disparity? What legal course prescribed and set down to restrain the Ecclesiastical Judge, in case he will be intermedling with such persons? (for it is irrational to imagine there should be such a Law, and yet that it should be destitute of sufficient means to uphold and maintain it self by.)

Truly I am not so vain, as to say there is no Law extant which constitutes this Disparity, because I know no such; but I have been seriously inquisitive and diligent in searching after this, but cannot attain a knowledge of any such; and would any be so kind to inform me, I should thankfully own that kindness.

Next, for any legal course prescribed and set down to restrain Ecclesiastical Judges, in case they will be intermedling with such persons: If there be any such, it must be one or other of these three wayes. 1. By Writ of *Provision* and *Præmunire*. Or, 2. By a Writ of *Indicavit*. Or, 3. By a Writ of *Prohibition*. (By one or other of these) the Ecclesiastical Judge is restrained in his proceedings, and commanded to desist from prosecuting further such matters, as being before him, are referred to, in those Writs.

Now concerning the first, *That Provision and Præmunire* has no place nor use in this matter, I do for the present plainly declare, and afterwards I shall have occasion more largely to prove it. 2. Then, for the Writ of *Indicavit*, that is notoriously known to lie there *where a Suit of Tythes is commenced in*

be Eccleſiaſtical Court, which does amount to a fourth part or above of the whole Benefice: or it lieth for the Patron, where his Clerk is impleaded for the Advowſon (i. e.) the Right of Patronage.

3. There remains only the Writ of *Prohibition*: This is ſaid to be two-fold; *Prohibitio Juris, Prohibitio Hominis. Prohibitio Juris* is ſuch as is grounded on any Statute or Law of this Land. *Prohibitio Hominis* is ſuch as has no preciſe word or letter of the Law to ſuſtain it, but is raiſed up by Argument, and by way of ſurmiſe, and as the wit of man will ſuggeſt.

Now put theſe Prohibitions of both ſorts together, and I dare boldly affirm, that none of either kind have been, or can, or ought to be granted, ſo as to ſuperſede the Eccleſiaſtical Judge from his legal proceedings againſt any perſon (where the matter proceeded upon is indeed of Eccleſiaſtical cognizance) meerly becauſe ſuch a perſon bears ſome office of civil power, is a Mayor, Sheriff, Portrieve, or any other in like place of authority: And this is the reaſon why I take ſo much confidence in delivering this affirmation, becauſe it is the incompetency of the cauſe brought into tryal before the Eccleſiaſtical Judge; and not this or that quality or condition of the parties proceeded againſt, that alwayes makes way for moving for, and granting of, a Prohibition.

Thus much has been ſaid for the removal of theſe Objections, and ſtill it is clear and evident, that the exerciſe of Eccleſiaſtical Juriſdiction by the Biſhop over all perſons whatſoever within his Dioceſs, in matters and cauſes truly belonging thereunto, tends not at all to the impairing or invading the Kings Royal Prerogative.

It

It has been the glory of our Kings to keep the Rights and Liberties of the Church safe and entire, and never to interpret a just exerting and using of their Jurisdiction, to be a diminishing of their Royal dignity. In some old Presidents of the Writ *de Excommunicato capiendo* (*A privilege peculiar to the Church of* England *above all the Realms of* Christendom *that I read of*, sayes Dr. *Cosen*, *Apol. par.* 1. p. 9.) The King declares thus, *Nolumus quod libertas Ecclesiastica per nos vel Ministros nostros quoscunque aliqualiter violetur* Register. in bre. orig. p. 69 a. And again, *Jura & libertates Ecclesiasticas illæsa volentes in omnibus observari*, *ibidem* But I have one greater instance hereof to add here: At the time of His Majesties Coronation, the Oath that He is pleased then to take, has this Article therein—— *That He will grant, keep and confirm to His people of* England, *the Laws and customs to them granted by the Kings of* England, *His lawful and religious Predecessors; and namely, the Laws, customs and Franchises granted to the Clergy by the glorious King St.* Edward *his Predecessor, according to the Laws of God, the true profession of the Gospel established in this Kingdom, agreeable to the Prerogative of the Kings thereof, and the ancient customs of this Land.*

Afterwards, one Bishop present, reads this Admonition to the King before the people with a loud voyce—— *Our Lord and King, we beseech You to pardon and grant, and to preserve unto us, and to the Churches committed to our charge, all Canonical Priviledges, and due Law and Justice; and that You would protect and defend us, as every good King ought to be a Protector and Defender of the Bishops and Churches under His Government.*—— Whereto the

the King answereth *with a willing and devout heart, I promise and grant my part, and that I will preserve and maintain to you and the Churches*, &c. *By Canonical priviledges that belong to them and their Churches, there must needs be implyed the Honour of their several Orders, as, that Bishops should be above Presbyters*, &c. *together with all their due Rights and Jurisdictions.* Dr. *Stewards* Answer to a Letter concerning the Church, and the Revenues thereof.—

Of these Laws, Customs and Franchises granted to the Church and Clergy, this of actual exercising Jurisdiction Ecclesiastical in causes belonging thereto, is (as I have before shewed) one, and that a principal one too: Now to imagine, that the King will bind Himself by Oath to the confirming of such Charters and Grants, which he either resolves not to keep, or such as are detrimental to Him, and tend to the impairing His Prerogative, is neither consistent with Reason, nor Loyalty, nor Religion. Here is no need of that Writ in the Kings behalf, called, *Ad quod Damnum:* As what damage and prejudice will come to the King by confirming Episcopal Jurisdidiction, and allowing the actual exercise thereof; for, in truth, the exercise thereof kept in its right constitution and dependance (for such a Jurisdiction is only here intended) is so far from diminishing the Right, and darkning the Jewels, of the Crown, that they receive a greater lustre and resplendency thereby.

We have spoken of the Kings Oath, which He is pleased at the time of His Coronation to take for the benefit and security of His Subjects: There is also the Subjects Oath which they are to take in Recognition of the Kings Sovereignty, and in testimony

ſtimony of their fidelity to him, I mean, the Oath of Supremacy; a conſideration of which is very proper and pertinent to the matter in hand, eſpecially, that one branch which the Taker there ſwears to, and declares that—*To his power he will aſſiſt and defend all Juriſdictions, Priviledges, Pr-heminences and Authorities united and annexed to the Imperial Crown of this Realm.* In which words, the Eccleſiaſtical Juriſdiction is (if not only) yet ſpecially aimed at: Now let ſuch perſons that are placed in Offices of civil Power and Authority, and conceit themſelves not ſubject to Eccleſiaſtical Juriſdiction (becauſe of their being in ſuch Offices) and who yet do take this Oath at the entrance into their Offices; let them, I ſay, ſoberly and adviſedly bethink themſelves, how conſiſtent an Oath taken for the obſervance and defence of the Eccleſiaſtical Juriſdiction, is, with a plain diſowning of ſuch Juriſdiction as to themſelves, or impugning of it, and bearing themſelves diſobediently to it, or exempting themſelves from it, in matters which the Law has clearly appropriated to it: or, in a word, to act any thing to the prejudice of the lawful proceedings thereof. It is frivolous and vain to alledge, that they acknowledge, and will ſubmit to this Juriſdiction in the King, and yet at the ſame time deny their ſubmiſſion to the exerciſe of it by the Biſhops. This, I ſay, is a vain and frivolous Allegation, becauſe it is not a notional and ſpeculative acknowledgment, that ſuch a Juriſdiction *is united and annexed to the Imperial Crown of this Realm*, which only fulfills the import of this Oath: But it is an obedience in practice by ſubmitting to the lawful exerciſe of it, that is the ſcope and intendment of it. Now the King exer-

ciſes

cises no judiciary power in His own person, but commits it to His Judges (*the King hath wholly left matters of Judicature, according to His Laws, to His Judges**) And the Bishops are those Judges to whom the Ecclesiast. Jurisdiction is committed, and to them the execution thereof belongeth; now what is done in derogation of that power and authority (derivatively) residing in them, is done in like manner in derogation of the same power primitively; that is, as it is originally in, and derives from the King Himself. I have said thus much concerning this branch of the Oath of Supremacy, not that I take upon me to judge any man; but because I take it to be my duty to recommend the consideration of this thing, as a matter of very weighty concernment, and fit to be made with all sobriety and seriousness.

* Lord Coke. 4 Instit. p. 71.

I sum up all delivered on this first Proposition under this Head, That Bishops proceeding by Authority, and deriving the actual exercise of their Jurisdiction from the King, are the Kings Ecclesiastical Judges, dispensing Justice in the Kings Ecclesiastical Courts, according to the Kings Ecclesiastical Laws. And that the same Jurisdiction reaches to, and over all persons whatsoever within their respective Dioceses; all which is agreeable to the Ecclesiastical Laws of these Kingdoms, and not repugnant to the Temporal Laws thereof, nor yet infringing in any kind the Kings Prerogative Royal; and therefore the Bishop of *Waterford's* Jurisdiction in the Case before laid down, was legally founded in respect of the persons proceeded against.

Prop. II. The second Proposition is this: The Bishops Jurisdiction over these persons, was legally founded in respect of the cause that this proceeding was made upon. The cause was, the rendring an accompt of Moneys given, and received to pious uses; and rendring of an accompt of a large Rate, levied to the use of the Church; as also concerning the Reparation of the Body of the Cathedral Church at *Waterford*. That the Bishop is the proper competent Judge, to exact an accompt of all such Moneys so given, and so to be disposed of, will not, I suppose, be denied: or, if it be denyed, the worst of it is, 'tis but the being put to the proof of it, which is no very difficult task, and for sureness sake, shall by and by be made good. And for the Reparation of Churches, that the same belongs to Ecclesiastical cognizance, though the Law be clear for it, will yet be made more clear, by having those Laws for it, produced: But before that be entred upon, some notice must be taken of what has been alledged, and passed roundly from the mouths of many, that concern'd themselves much in this matter: That by ancient contract, the Mayor, Sheriffs, and Commonalty of *Waterford*, stand obliged to the making good this Reparation; whence the Inference is made, That all contracts being of civil cognizance, therefore the Bishop was no competent Judge of that branch of the cause, which was brought before him, the same being not cognizable in the Ecclesiastical Court.

This Allegation at the first hearing, seemed mighty fair, and plausible, insomuch as some persons, otherwise no Enemies to Episcopal Jurisdiction, were much concerned, and startled thereat: And when they first

heard it, they concluded presently that the Bishop had taken a matter in hand, which he ought not to have moved a hand towards, as not appertaining to his jurisdiction, and so has usurped on the Temporal Courts: Nay, so strangely transported were some, that in their heats they did not stick to affirm, that the Bishop by doing what he did, had incur'd some heavy penalty, which they would not abate of an Ace, less than a *præmunire* it self. And many, and hard, and bitter were the censures, that several open mouths pronounced upon him: But causes as well as persons are sometimes prejudged; and both were so in this case. As a preparative to the clearing, and making good, that both cause, and person were thus prejudged, I shall speak something concerning the matter of contract, so mainly insisted upon, and that which raised the cry; as if the Bishop grounded his proceeding on that contract, and therein encroached on the Temporal Jurisdiction.

Let it therefore for the present be supposed, That the Bishop did ground his Ecclesiastical proceeding on that contract (although indeed the cause was not so laid, yet supposing it were) the inference that is thence made peradventure is not good; as that the doing thereof was an encroachment on the Temporal Jurisdiction. Peradventure I say it is not; For I will not be positive in what I am about to write; but referring my self to better judgments, I freely submit to their decisions herein.

This I propose then, That all matters of contract, arising from, or upon causes originally of Spiritual cognizance, are not excluded from the Ecclesiastical Tribunal. I put this case not much differing from that which we have before us. *Titius* a parishioner

of

of *Dale*, with leave of the Parſon, and reſt of the pariſhioners, builds up an Iſle, or Out-chappel, adjoyning to the Pariſh Church of *Dale*, and intends to reſerve the ſame to himſelf, and relations, for the uſe of a burying place, and undertakes to keep this Out-chappel, from time to time, in ſufficient, good, and decent repair. Notwithſtanding this obligation ſo to do, the repair of the ſame is neglected. If the queſtion were put to me, before whom, and in what Court, *Titius* may be ſued, and compelled to make good the reparation thereof, I ſhould not doubt to anſwer, that *Titius* may be proceeded againſt by the Ordinary, *ex Officio*, or impleaded by any voluntary Promoter of the Office, *in cauſa reparationis Capellæ*, &c. The Church-wardens may preſent that neglect, and the perſon guilty of it. One Article uſually given to preſent upon, is this; Whether the Church or Chappel in the Body, and Chancel of it, be in good repair; If it be not, through whoſe default comes it to paſs, that it is not; and this Article is grounded on the 93*d Canon* of this Church. So then as the neglect and default is puniſhable by the Ordinary; the reformation likewiſe thereof in making good the repair, (otherwiſe by contract undertaken for) is to be enjoyned by the Ordinary.

Moreover, Penſions out of Churches, or any Annual Portion becoming due from any Colledge, Biſhoprick, Cathedral Church, or Deanry, to be paid to any Rector, Vicar, or Curate of a Pariſh Church; if they be detained, the ſame are demandable, and to be recovered in the Eccleſiaſtical Court, according to the Statute, *viz.* 34 35 *Hen.* 8. *cap.* 19. Now the Right of paying any ſuch Penſions, and Annual

Portions is grounded on Ancient contract, obliging thereunto.

In Compositions Real for Tythes, made either between the Parson of one, and the Parson of another parish, for the stating and setling each others right, and to prevent litigious impleadings of each other. Also compositions made between the Parson, and some one or more of his parishioners, touching the not paying any Tythes at all, but a certain, setled, and determinate sum in lieu thereof: This is usual in this Kingdom, for Mills that grind corn, to compound for a certain sum, to be paid instead of the Toll-tythe. Now the Ecclesiastical Judge before whom these compositions are to be alledged, may hear and determine thereof. *Tit.* 140. *Cler. Prax.* Sir *Thomas Ridley's View*, &c. *part.* 3. *chap.* 3. *Sect.* 6. *Cosen. Apol. p.* 1. *ch.* 10.

There is a cause of Ecclesiastical cognizance, called *Negotium subtractionis Dotis, causa nuptiarum promissæ*. The case is thus; *Titius* in consideration of Matrimony, to be contracted and solemnized with his Daughter *Portia* by *Sempronius*, promised Ten pounds to *Sempronius*. The Matrimony being solemnized, and *Titius* not paying the promised sum, *Sempronius* impleads him before the Ecclesiastical Judge for the same, *Titius* sues out a prohibition; Notwithstanding which, *Sempronius* obtains a consultation, wherein is affirmed, That the Court Ecclesiastical may proceed therein. This you may find reported by Dr. *Cosen. Apol. p.* 1. *pag.* 26. And the several Opinions of Common Lawyers concurring therein. More instances might be given of this kind, to evince, That all contracts arising from matters which are in their Original of Spiritual cognizance,

zance, are not excluded from the Eccleſiaſtical Tribunal; obſerve what is further ſaid: Although promiſes and contracts of Money, are generally pleadable in the Courts of the common Law, yet, as *Bracton* writes, *Cauſæ de rebus promiſſis ob cauſam Matrimonii, in foro Eccleſiaſtico terminari debent, quia cujus juris & juriſdictionis eſt principale, ejuſdem erit acceſſorium:* And in another place he gives a reaſon for the ſame, *quia ſemper videndum propter quid, aliquid ſit, aut permittatur.* Zouch. Juriſdiction of the Admiralty. *p.* 64.

I do not affirm an abſolute parity between theſe caſes, and that which is before us; I refer'd my ſelf before, and do now ſtill ſubmit what is ſaid to the judicious deciſions of others: But, this is yet upon the ſuppoſal, that what is objected, was really ſo, as is objected, the contrary to which is moſt clear; for as touching what relates to this Vindication, there is no need at all, to ſtrain any doubtful or diſputable caſe, to make it favour the matter in hand; for the contract here pretended, was not inſiſted upon, ſo as to make a foundation of any juriſdictive proceeding, in the Eccleſiaſtical Court thereupon.

'Tis true, the contract gave occaſion to the Biſhop to call upon, and admoniſh the Mayor, and Sheriffs of *Waterford*, to look after what belonged to their duty to be done. They being thus ſtirred up, make rates, levy, and collect Money from the ſeveral Inhabitants for this end, of repairing the Body of the Cathedral, *&c.* They receive the voluntary contributions for the Bells. The Money thus levied, collected, and received, is little diſpoſed of for the uſes intended: The Church remains unrepaired, the other works are neglected; now what was regularly

larly, and legally to be done in this case, was regularly, and legally entred upon; the work of reparation it self; the accounting for Money levied, raised, contributed and received for that purpose, and other matters relating to the Church, are the grounds of this proceeding, as by the several Acts of Court remaining in the Registry of *Waterford*, may more fully appear.

Now that these are justifiable grounds, whereon legally to found an Ecclesiastical proceeding, comes to be made good, which I shall do, by laying down and proving these three Assertions.

1. The rendring an accompt of Moneys given, and received for pious causes; and the right disposing thereof, belongs to the Bishop within his own Diocess, to call for, and see performed.

2. Reparations of Churches, with all the incidents thereunto, both by Temporal, and Spiritual Law, appertain to Ecclesiastical cognizance.

3. The penalty of *Præmunire* will not be incurr'd by any Ecclesiastical Judge for making such proceedings.

1. The rendring an accompt of Moneys given and received for pious causes; and the right disposing thereof, belongs to the Bishop within his own Diocess, to call for and see performed: Pious causes are set down in the Law to be of many, and various kinds, and to enjoy many and various priviledges; for the many and various kinds of them, see *Leg. illud, & Leg. Sancimus. Cod. de Sacro-sanctis Ecclesiis*; and *Lindwood in cap. ita quorundam, ad Verb. pias causas. de Testamentis lib. 3. Provincial. Constitut.* Among which, these especially fall under our disquisition; namely, Legacies, or other Donations, either bestowed

beſtowed, for the erecting of Hoſpitals, and Almſ-houſes, and endowing them with ſufficient means, and adding to ſuch endowments, for the ſuſtentation and maintenance of aged, ſickly, decrepid, weak and helpleſs perſons, as Priſoners, Orphans, Widows, &c. Or ſuch as are beſtowed for the erecting, and repairing of Churches, and providing of ſuch decent Ornaments, and other Utenſils, as are requiſite therein; alſo ſuch as are beſtowed for the celebration of Divine offices, at certain times, and ſeaſons appointed.

Now although I have delivered this Aſſertion univerſally, yet it is to be underſtood with reſtriction to thoſe kinds of pious cauſes, that I have particularly ſpecified. The Imperial Law allows a very ample and large power to Biſhops, in order to the regulating and diſpoſing of theſe to their intended purpoſes, *Authent. collat. nona. Tit. de Sanctiſſimis Epiſcopis, cap.* 23. See alſo the Canons called the Apoſtles Canons, *cap. præcipimus* 40 *ibidem. Item cap. Tua nobis* 3 *& cap. Johannes. de Teſtamentis.* And concerning ſuch things as belong to Almſ-houſes, and Hoſpitals of any (but Royal) foundations, our Statute Law is very expreſs herein—*And as to other Hoſpitals which be of another foundation, and patronage than the Kings, the Ordinaries ſhall enquire of the manner of the foundation, eſtate and governance of the ſame, and of all other matters, and things neceſſary in this behalf, and upon that make correction and reformation after the Laws of* Holy Church, *as to them belongeth*; An. 2. Hen. 5. cap. 1. ſtat. 1.

And whereas in ſome particular caſes of this nature, it is appointed by the Statute 43 *Eliz. cap.* 4. That by certain Commiſſioners authorized thereun-

to

to under the Great Seal of *England*, ſuch Lands, Moneys, Goods, and Chattels as have been given to ſuch Godly uſes, as are there mentioned, ſhould be rightly ordered, and all miſemployings thereof be prevented and regulated; yet there is a proviſo in that Statute, to this end—*That neither this Act, nor any thing therein contained, ſhall be any way prejudicial, or hurtful to the Juriſdiction of the Ordinary, or power of the Ordinary; but that he may lawfully in every caſe execute the ſame, as though this Act had never been had or made:* Raſtall.

And where there is a grant of Money, or other moveable goods, made by any perſon either in his life time, or bequeathed by Legacy, at the time of his deceaſe for ſuch pious cauſes, as the erecting and repairing of Churches, or buying ſuch decent Ornaments, and Furniture as belong to the ſame, *&c.* That the Money, or other moveable goods thus granted, or bequeathed, be diſpoſed for ſuch uſes, and according to the intent of the Donor, belongs to the Biſhops care to look after, and ſee performed: Inſomuch, as they in whoſe hands ſuch Moneys, and Goods are detained, may be convented before the Biſhop, and made to render an accompt thereof. And the proſecution made herein, may be either of *office*, or at the promotion of the Churchwardens of that, or ſuch other Pariſh, to which the ſame is given. *Detentio legatorum ad uſum pauperum, & quemlibet alium pium uſum: detentio bonorum ad publicos uſus Eccleſiæ deſtinatorum, ad Epiſcopalem juriſdictionem pertinent*, Coſen. Tab. vii. A.

To this purpoſe it is, that in Articles given at Epiſcopal Viſitations, *one is to enquire what Lands, Poſſeſſions, or other Rights are belonging, or deemed and*

and reputed to belong unto any Eccleſiaſtical Benefice, and in whoſe hands they are, and how they have been in their hands: Which Article of Enquiry is grounded on the 44*th* Canon of this Church of *Ireland*; and cognizance of theſe things belong to the Eccleſiaſtical Courts, and may (as I ſaid) be taken therein, by the Eccleſiaſtical Judge, either of meer office, or office promoted, &c. and whether ſoever it be, that ſuch Rights become due by Legacy, or any other Donation.

A man by his Teſtament bequeaths Goods to the Fabrick of a Church, the Executor is to be ſued for this in Court Eccleſiaſtical, and thus it is determined at common Law; ſee for this a conſultation granted. *Regiſter. p.* 57. *a.* cited at large by Dr. *Coſen. Apol. par.* 2. *p.* 190. But what if any Iſſues and profits out of certain Lands and Tenements growing, and belonging to any Church, be detained? They alſo may be ſued for, and recovered in Court Eccleſiaſtical: *If a Terr-Tenant holding Land, that hath uſually paid for ſuch a Tenement a pound of wax, or ſuch like, unto the Church, do withhold it, the Churchwardens may ſue him for it in Court Eccleſiaſtical.* Dr. *Coſen. par.* 1. *p.* 45. And he alledges for this an ancient Author, one *Goodall*, who wrote in the time of King *Henry* 8th, and intituled his Book, *Of the Liberties of the Clergy by the Laws of the Realm.*

And obſerve, that although a pound of wax, and ſuch like, is only here mentioned, yet it is not the tenuity, and meaneſs of the thing that gives a right in this caſe to ſue for it in the Spiritual Court: But becauſe there is a right ſo to do, the ſame courſe of proceedings may be followed, were the profits ſo

accrewing, and ſo to be diſpoſed of, far more valuable. I will inſtance but in one caſe more (which the Dr. mentions in *p.* 3. *chap.* 8. *p.* 102.) An Ordinary proceeded *ex Officii ſui debito*, to the correction of crimes, and exceſſes of thoſe that were under his juriſdiction: And amongſt other objected Articles againſt a Knight, for not ſufficient reparations of a Church, tending to the correction of his ſoul, by reaſon of his detaining of that, which he ought not. This, ſayes he, is allowed in the Regiſter, *Tit. conſultation. fol.* 53. 6. I might, but ſhall not need, to add more for the proof of this firſt Aſſertion.

2. Reparation of Churches, with the incidents thereunto, both by Temporal and Spiritual Law, appertains to Eccleſiaſtical cognizance, I call theſe the incidents thereunto. The buſineſs of making Rates for ſuch Reparations; inſpecting the money ſo rated; queſtioning thoſe that refuſe to contribute their proportion; and calling to account for money ſo collected. Theſe are all dependant on the other, in caſe of any judicial proceeding that ſhall happen to be made thereon: the reaſon is given in this, as in all other things of like nature, in that excellent law; *Nulli prorſus, Cod. de judiciis*; the ſum of which is this, *Ne continentiæ cauſarum dividantur.*

Now the Temporal Law is expreſs for the proof of this, in the Statute of *circumſpecte agatis. An.* 13. *Edwardi Primi.* Among the thirteen caſes there recited, and appropriated to the Eccleſiaſtical Tribunal. This is one, *viz.* Prelates may puniſh for leaving Church yards unclоſed; or for that the Church is uncovered, or not conveniently decked. This Statute is alſo inſerted in the provincial conſtitutions, collected by *Lindwood*, *Tit. de foro competenti*; and ſo

is be-

is become part of the Kings Eccleſiaſtical Law. Several Common Law caſes are cited for this by *Meriton*, in his Guide for Church-wardens, *Sect.* 37. And note, ſayes he, That the Eccleſiaſtical Court hath cognizance of the reparation of the Body of the Church. He inſtances in the Body of the Church, becauſe (not excluding the other parts) mention is there made of the Pariſhioners, to whom the repair belongs, and who are to contribute to the ſame.

Dr *Coſen* in the Firſt part of his Apology, *cap.* 7. informs us thus, touching this matter: When a Prohibition was ſued out (ſayes he) for proceeding Eccleſiaſtically in a matter concerning the Reparation of the Body of a Church. A judgement was given thereupon, in a conſultation to this effect (which he ſayes is recorded in the Regiſter, cited by him thus [*pag.* 43. *a.*] *Vobis igitur ſignificamus quod ſuper emendatione & reparatione defectuum corporis Eccleſiæ juxta conſuetudinem approbatam, facienda, procedere poteritis, & ea facere quæ ad forum Eccleſiaſticum noveritis pertinere, dicta prohibitione non obſtante.* And by reaſon of defects in the reparation of a Church (ſayes the ſame Author) *ibid.* Money it ſelf may lawfully be ſued for in a Court Eccleſiaſtical; as appears by another conſultation, *Reg. pag.* 48. *a.* And ſo it is provided in the very Statute of *circumſpecte agatis.* The words are theſe mentioned in it. —*In which caſe none other penance can be enjoyned but pecuniary.* See *Lindwood ad verbum. Sub pœna. cap. Sint Eccleſiarum Rectores. De Officio Archidiaconi*, Lord *Coke de jure Regis Eccleſiaſtico*, p. 9.

3. The penalty of *præmunire* will not be incurred by any Eccleſiaſtical Judge, on account of any proceedings of this Nature. The proof of this Aſſerti-

on depends upon two things, *viz.* The truth of the two former Aſſertions, that the cauſe proceeded upon, was properly belonging to the Eccleſiaſtical Tribunal, and that the Biſhop the Eccleſiaſtical Judge proceeding therein, acted not by, or from any foreign juriſdiction or power: Both theſe are ſo manifeſtly true, that I might ſuperſede my ſelf the labour of ſaying any more therein: But becauſe ſome mens mouths were opened wide, and loud in that point, as if when by Law they could not, they would yet by their clamorous votes, and confident affirmings, involve the Biſhop in the penalty of this Statute: It will therefore, I think, be both a ſeaſonable undertaking, and proper to our purpoſe, to write ſomething more particularly concerning the ſame; and the rather, becauſe the imputation of incurring the penalty contained in that Statute, is oftentimes (at leaſt) threatned againſt thoſe that are careful, and active in the diſcharge of their Office of Truſt in matters of Eccleſiaſtical Juriſdiction.

It has been the obſervation of a late Hiſtorian, (*Fuller, Church-Hiſtory, Book 4. p. 149.*) that this Statute of *præmunire* has had the hard hap not to be honoured with ſo many readings thereon, as other Statutes: And therefore I ſuppoſe, the courſe now taken by me, in ſpeaking ſomething hereof, will appear the more excuſable: If not having opportunity of viewing the few readings, that have been made thereon, by the Learned in the Common Law, I have recourſe to ſuch other Writers, as upon ſome occaſional emergency, or other incidental matter, have treated thereof.

The Writ of *præmunire facias*, grounded principally on the Statute, made in the 16 year of King

Richard

Richard the Second, *cap.* 5. is awarded against those that have procured any Proceſs, or Bull of the Pope from *Rome*, or elſewhere, for any Eccleſiaſtical place, or preferment within this Realm, or doth ſue in any foreign Eccleſiaſtical Court, to defeat, or impeach the Kings Courts; and the party offending herein, is liable to grievous penalties, mentioned in the ſaid Statute: This account of a *præmunire*, (as abſtracted by him from the Statute) I take from Sir *Thomas Ridley*, in his View of the Civil and Eccleſiaſtical Laws, *p.* 3. *c.* 1. *Sect.* 1.

Some later Statutes (ſayes Dr. *Cowell* in the word *præmunire*) do caſt this puniſhment on other offenders: *As denying the Kings Supremacy the ſecond time, by the Statute* 1 Elizab. 1. *falls under the puniſhment of* præmunire. *And by the Statute* 13 Eliz. *cap.* 2. *He that affirmeth the Authority of the Pope, and refuſes to take the Oath of Supremacy, falls under the like penalty: ſo they do likewiſe by the Statute of the* 13 *of the Q. cap.* 1. *that are ſeditious talkers, or affirm the Q. Majeſty to be an Heretick.*

Now let us put all theſe together, and whatſoever elſe is collected from the Statutes made before, and after the Reign of King *Richard* the Second, touching theſe matters; Put all theſe (I ſay) together, and what, either in groſs or tale, will they make to diſadvantage the matter we have in hand? or what can be found, either in the Biſhop, or his proceedings, impeachable from thence? Is it his being appointed to, and ſetled in the Epiſcopal See of *Waterford* and *Liſmore*? None can affirm that: For he receives not this by any Bull from *Rome*, but by Donation and Inveſtiture from the King of *England*. Is it the actual exerciſing of Eccleſiaſtical Juriſdiction

risdiction within his Dioceſs? That cannot be neither; becauſe he is not empowred to this by any Foreign Authority, but by his Majeſties Letters Patents for his Conſecration; and by His Majeſties Letters Patents for reſtauration of the Temporalities. Are any of his proceedings againſt the Kings Crown and Dignity? No, They tend not to promote any foreign power, but to maintain the Kings Prerogative and Supremacy, over all perſons in cauſes Eccleſiaſtical: Does he refuſe to take the Oath of Supremacy, or fall under any of thoſe crimes mentioned in the Statutes of Q. *Elizabeth*, and which are liable to the penalties of *præmunire*? This cannot be ſaid, He took the Oath of Supremacy, on other occaſions required by Law: And he took it (as is appointed) at the time of his Conſecration. Laſtly, are any things done by him, whereby the Kings Courts are impeached and defeated? Not this, becauſe He the Kings Eccleſiaſtical Judge in the Dioceſs of *Waterford* and *Liſmore*, hears and determines matters of Eccleſiaſtical cognizance in the Kings Eccleſiaſtical Court there, according to, and by the Kings Eccleſiaſtical Laws.

Whence then may we conceive, ariſes this imputation of a *præmunire*? There is indeed no ground for it, but in the fancies, (and would I had not reaſon to ſay) in the wiſhes of ſuch, as are ſo ill affected, that they do not patiently endure the Epiſcopal office, much leſs allow the exerciſe of any Juriſdiction by a Biſhop.

Obſervation of former times, and reading, beſides preſent experience of things now, brings to our knowledge the reſtleſs practiſes of ſome, that endeavour by all contrivances of wit and policy, to load

load with odious charges the exerciſe of Epiſcopal Juriſdiction; and (if it may be done) to draw it within the penalties appointed by this Statute of *Præmunire*: yet there are many ſober and wiſe men, who have declared openly enough their opinion, That as all Juriſdiction whatſoever in theſe Kingdoms, is radically in the King, and ſo an Union of Eccleſiaſtical and Temporal Supremacy, is in him; there can therefore lie no *Præmunire* at this day againſt any man exerciſing Juriſdiction ſubordinately under the King; which every Eccleſiaſtical Judge both doth, and acknowledges himſelf to do: See to this purpoſe Dr. *Coſen* in his *Apol. p.* 1. *cap.* 18. Sir *Tho: Ridley ut ſupra*, Dr. *Cowell* in the word *Præmunire*: *Whatſoever*, ſayes he, *is now wrought or threatned againſt the Juriſdiction Eccleſiaſtical, by colour of the ſame* [*Statute of* Præmunire] *is but in emulation of one Court to another, and by conſequent a derogation to that Authority, from which all Juriſdiction is now derived, and the maintenance whereof, was by theſe Princes eſpecially purpoſed:* Nam ceſſante ratione, ceſſat Lex,

Sir *Thomas Smith*, a perſon of great judgment, one who well underſtood His Sovereigns Right and Prerogative, and would not detract any thing in the leaſt manner from it, declares his ſenſe herein after this manner—*Verum in præſentiarum Curia Chriſtianitatis perinde atque cæteræ omnes, virtutem vim, authoritatem imperium, juriſdictionemque ſuam, præterquam Sereniſſimæ Majeſti & Diademati Regio, poſt immortalem Deum, Poteſtati aut Principi, accepta refert Neutini. Id ſi verum eſſe concedis (quod eſſe conſtat veriſſimum) tum Sanctioni Statuariæ de Præmunire nullus per Angliam locus relinquitur; quando alibi quam*

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in Curia Regis, ac Regiæ, jus nullum dicitur. De Republ. Anglicana. lib 3. cap. 11.

There is a certain word indeed in that Statute, *viz.* [*alibi*] the Court of *Rome*, or elsewhere; and this word is supposed, to be meant of, and refer to, Bishops Courts: So I read that *Fitz-herbert* a great Lawyer reporteth it. *Tit. præmunire num.* 5. Howbeit, saving all respect to so great a Lawyer, yet this is judged by many grave, and learned persons, (see those before mentioned) to be a forced and groundless construction made thereof. The word it self is of an ambiguous and variable signification; it may refer to the Bishops Consistories, and it may, as well, not refer to them; it may refer to any Forreign Courts and Judicatories, and any other Courts of these Kingdoms, that are not Courts of common Law *, or any Courts whatsoever (most agreeable to the purport of that Statute) wherein any thing is done *in derogation of the Regality of our Lord the King*; it is a slippery and uncertain word, none can take sure hold of it; no determinate and precise meaning can be affixed to it.

* So it seems it may refer to the Court of Admiralty, in my Lord *Coke*'s opinion. 4. *Inst. cap.* 22.

This word then being so doubtful and uncertain, and the penalty of this Statute being so severe, as Imprisonment during life, forfeiture of Goods, Lands, Chattels, Tenements, Ejection out of the Kings favour and protection; and since the noted Rule is this, *in pœnalibus causis benignius interpretandum est.* L. 145. de Reg. Juris. parag: finali. Now it would be so far from a benigne, as to prove indeed a most rigorous sentence, to pronounce the falling under so great a penalty, on occasion of this expression, so full of ambiguity and uncertainty.

May

May I presume, with the good leave of the Learned in the Municipal Laws of this Kingdom, to interpose my conjecture concerning this word [*Alibi*, or elsewhere] (for where there is ambiguity, there is room for conjecture) I have the ground, of what I have to say, from Dr: *Cosen, Apol. p.* 1. *cap.* 18. It was in the sixteenth year of King *Richard* the second, that this Statute was Enacted, that was in the year of our Lord, One thousand three hundred ninety and three; at which time, and for some time after, the Schism about creating of Popes (which is reckoned, and so called, the Twenty ninth Schism, *Isaackons Cronolog. p.* 353.) was very rife, and hot in agitation. *Boniface* the Ninth was at *Rome*, and *Clement* (called the Seventh) made by the French Cardinals, was at *Avignion* in *France*; here was at the same time, as had been before, two Popes actually exercising Papal Jurisdiction; both making Cardinals, and both striving to extend their power and authority so far, that other Kingdoms, as well as the places where they were resident, might be under the influence thereof: Now so it was, that this Statute of *Præmunire*, being intended for the utter exclusion of all Forreign Authority, it might be judged necessary to cut off all intercourse betwixt the Kings Subjects, and the Popes Consistory, whether at *Rome*, or elsewhere; and that Processes, and other Judicial Writs, as well dated from *Avignion*, or any other place, as from *Rome*, might make the purchasers and pursuers of them, liable to the penalties intended by that Statute.

But there is ſomething further alledged here, That although the Eccleſiaſtical Courts as now eſtabliſhed, are not in the general intent included within this Statute; yet then ſurely they are, when cauſes belonging to the Temporal Courts, are by Eccleſiaſtical Judges retained, and proceeded in: I know it paſſes as a very current Opinion among many, That for an Eccleſiaſtical Judge to deal in any cauſe, not belonging to his Juriſdiction, is *Præmunire*: Great is the Authority that bears up this Opinion; and for the greatneſs ſake of the Authority, many are the Adherers to it. In my Lord chief Baron *Boltons* Juſtice of the Peace, *cap. præmunire.* There is firſt a recital of the ſeveral Statutes, concurring in, and concerning this crime; then follows certain Book caſes, or reſolutions (as his Lordſhip expreſſes it) added, for the better explanation of thoſe Statutes. One of the ſaid caſes, is to this effect, *viz.* the 21. — *Note that the words of the Statute, are in* Curia Romana vel alibi, *which is intended in* Curia Epiſcopi: *And therefore if a man be Excommunicated, or proſecuted in the Spiritual Court, for a thing which appertains to the common Law, he that proſecutes ſuch a Suit, is in caſe of* præmunire: *for this there is alledged in the margent*, 5 Ed. 4. fo. 6.

Before I was ſtopped with what is thus ſet down, and what I find affirmed by others to the ſame effect, I was ready to ſay, That it muſt be a very forc't ſtreining of that Statute, that will be able to wring ſuch a ſenſe out of it. But, who am I, that I ſhould oppoſe my obſcure meaneſs, to the authority of ſo great a perſon? May I have fair leave therefore, to offer only a few things to be conſidered of touching this matter, in behalf of the Eccleſiaſtical Juriſdi-

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ction, and the Judges belonging to the ſame?

And firſt, whereas it is ſaid, that by the word [*alibi*] in the Statute, is intended *Curia Epiſcopi*: I refer the Reader to what has been before ſpoken of this particular thing; and further, I may now ſeaſonably notifie one thing, obſervable in the very Statute it ſelf, that may lead us by a more certain hand to perceive, what this word [*alibi*] has a reference to, and what it has not: For, whereas in the aforeſaid Statute of *præmunire*, Anno 16. *Richard* 2d. *cap.* 5. It is Ordained, *That none ſhall purchaſe or purſue in the Court of* Rome, *or* (*elſewhere*) *any Proceſſes, Bulls*, &c. *nor the ſame bring within the Realm, viz. theſe His Majeſties Dominions.* This (be it ſpoken under correction) cannot rationally be intended *de Curia Epiſcopi*, here within this Realm; the reaſon is plain, becauſe *Curia Romana vel alibi*, where ſuch Proceſſes and Bulls, &c. are purchaſed and purſued, and from whence they are brought within the Realm; theſe, I ſay, muſt be ſomewhere out of the Realm (for the bringing in of a thing, excludes the being of that thing there already) but the Biſhops Courts are within the Realm, and none of theſe Proceſſes brought into the Realm, can be from them; and therefore this word [*alibi*] has no reference to, nor can it be intended of, them.

Add hereunto, That the occaſion inducing this Statute, and recited in the preamble to it, ſeems not all to favour this ſenſe of the word: The Commons in Parliament having with great vehemency and earneſtneſs, repreſented the ſeveral Grievances the Kingdom lay under, among others, theſe are eſpecially mentioned, *viz. The Popes Excommunicating of Biſhops for executing the Kings Commandments*;

the Popes translating of them from See to See; sometimes out of the Kingdom, against their own, and contrary to the Kings Will: The Lords Spiritual being therefore demanded (as the Lords Temporal had been before) what their Advice and Will was in these cases: The Archbishops and Bishops, and other Prelates, openly disclaimed the Popes insolent carriage towards the King, and His Subjects; and declared, *That they would, and ought to stand with the King in these cases, in lawfully maintaining of His Crown, and in all other cases touching His Crown and Regality, as they be bound by their Allegiance:* Whereupon (sayes the Statute) *It is Ordained and Enacted, That if any purchase or pursue,* &c: *from the Court of* Rome, *or elsewhere,* &c. May I not here well demand, what relation either in the occasion, or sense of the Statute, can be made up betwixt Bishops Consistories, and this word [*Alibi*]? Bishops in their Jurisdictions were troubled by the Pope, as the King Himself was in the right of His Crown; both are complained of, both redressed by this Statute: How can that which is the Grievance complained of in the preamble of the Statute, come to be the thing aggrieving in the latter part of it? The truth is, provision is here made against the setting up, and abetting of all Forreign Authority; *but Domestical proceedings in Ecclesiastical Courts,* are not related to. This I am confident to affirm, by this Authority following, *The preamble* (sayes my Lord *Coke* from *Pl. Com. fo.* 369. *Stowells* case) *in every Statute is to be considered, for it is the Key to open the meaning of the makers of the Act, and mischiefs which they intend to remedy.* Also from a case 4 *Ed.* 4. *fo.* 4.

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& 12. The ſame learned Judge declares thus— *Every Statute ought to be expounded according to the intent of them that made it, where the words thereof are doubtful and uncertain, and according to the rehearſal of the Statute; and there a general Statute is conſtrued particularly, upon conſideration had of the cauſe of making the Act, and of the rehearſal of all the parts of the Act,* &c. 4 Inſtit. cap. 74. It is a general Rule allowed by all Laws in conſtruction of Statutes, *Quamvis lex generaliter loquatur, reſtringenda tamen eſt ut ceſſante ratione & ipſa ceſſet, cum enim ratio ſit Anima vigorque ipſius legis, non videtur Legiſlator id ſenſiſſe quod ratione careat etiamſi Verborum generalitas, prima facie aliter ſuadeat:* Idem. Ibidem.

And for the Book-caſe related to, and the inference made therefrom, hear what a learned perſon has delivered very fully and appoſitely concerning that: (not in anſwer to this Judges opinion) for he wrote many years before him; but to invalidate an Aſſertion of the ſame nature with this, and from the ſame Book-caſe, *viz.* 5 *Ed.* 4. *fol.* 6. *præmunire.* and made by one he then contended with) *This caſe does but ſpeak of the Excommunication by a Biſhop, and not of every dealing whatſoever in a matter belonging to the Kings Regality; and what if it had been twice ſo adjudged, both of them in ſuch corrupt times, when as the Royal Prerogative of the Kings of this Land to be Supreme Governors in all Juriſdiction Eccleſiaſtical, due to them in Right, and by Gods Law, was not* de facto *united to the Crown:*

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For the Biſhops they did not claim their Juriſdiction Eccleſiaſtical, next and immediately under God, from the Crown, as now they do; but ſeeing this part of Regal power, is now no leſs truly and fully veſted in the Crown, than is the Temporal; ſo as the Laws allowed for the Eccleſiaſtical Government, are termed by ſundry Parliaments, the Queens Eccleſiaſtical Laws, and Laws of this Realm, as well as thoſe that were firſt originally made here: And the Biſhops are proved to have their Authority and Juriſdiction Eccleſiaſtical derived down unto them from the Queens Highneſs under the Great Seal of England. *Is it then the like reaſon, ſtill to compriſe their Juriſdictions and Courts under that word of* [Alibi] *as if their Courts and Juriſdictions were not now the Queens, nor yet belonging to Her Regality?* Coſen. Apol. p. 3. ch. 7.

Furthermore, the holding plea of a matter belonging to the common Law by an Eccleſiaſtical Judge, (ſo conſtituted as he ought to be, and now is) does not tend to the diſinheriſion of the Crown; that is, not to the impairing of any Regality, Power or Preheminence belonging to the ſame, and therefore cannot be the crime of *præmunire*. The Statute 25 *Hen.* 8. *cap.* 21. declares concerning whom, and how offending the Statute of the 16 *Richard ſecundi*, was framed, namely, ſuch as ſue to the Court of *Rome* againſt the Kings Crown and Dignity Royal; one Statute beſt explains another. So then, where the Authority that is acted by, is the ſame, a miſtake in the matter to be proceeded upon, or manner of proceeding in, does not infringe that authority: The reaſon is, becauſe the Kings authority empowring to act, is ſtill acknowledged; and what is judicially done thereby, proceeds by power derived from Him,

Him, not from any power ſet up againſt him. I preſume it will be readily granted, That the upholding and ſecuring the Kings Supremacy in all cauſes, and over all perſons, is that, which principally, if not ſolely, is aimed at by this Statute: And then it plainly follows, that where that Supremacy is maintained, no breach of that Statute can be made, nor penalty incur'd by any, for a miſtake only of the matter, that any Plea (in Subordination to the King as Supream) is held upon.

The worſt that is to be ſaid in this caſe, is this, That he who being a ſpiritual Judge, does take cognizance of any temporal matter, offends in going beyond his Commiſſion; and truly this is bad enough, but not ſo bad neither, as to bring under the guilt of *præmunire*: And if it were, obſerve the conſequence, what that would be; for it would as certainly and unavoidably expoſe a temporal Judge to the penalty of a *præmunire*, if he proceed to hear and determine in a matter of Eccleſiaſtical cognizance (becauſe that is beyond his Commiſſion) as it would expoſe a ſpiritual Judge to the ſame penalty, that he intermeddles with cauſes of temporal cognizances; for obſerve well what *Bracton* ſayes in relation to both Juriſdictions, and the proper Judges of each ——— *Cum diverſi ſint hinc inde Juriſdictiones, & diverſi Judices, & diverſæ cauſæ, debet quilibet ipſorum imprimis æſtimare, an ſua ſit Juriſdictio, ne falcem videatur ponere in Meſſem alienam.* Again, *Non pertinet ad Judices Seculares, non pertinet cognoſcere de iis quæ ſunt ſpiritualibus annexa ſicut de decimis*, &c. Bract. l. 5. c. 2. apud Hookerum Eccleſiaſt. Pol. lib. 8. p. 218. I may be thought to have made a ſtrange, confident, and odd inverſion upon theſe

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two cases; but for my share, freely I do acknowledge, that it is above the reach of my reason, to conceive of any difference herein; for as both Spiritual and Ecclesiastical Courts are now constituted, deriving from the same Regal Supremacy, that the Temporal Courts do; the consequence is as good on one hand, as on the other.

Indeed I should not have exposed my self to the censure of being thought too bold in the concerns of Temporal Courts, and Temporal Judges, especially in such an inversion as this, so lyable to be frown'd upon: But the truth is, I found it made to my hand, by the person whose name I have often used, and whose Authority I much depend upon: *Is not* (sayes he) *the Prerogative Royal in, and for causes Ecclesiastical, as high and as rightly setled in the Prince, and incident to Her Highness Crown and Regality, as the same is for Temporal power and authority? What cause is there then, seeing* [seu alibi] *in the Statute signifieth* (*in true construction*) *any place whatsoever besides* Rome: *That every holding Plea by an Ecclesiastical Court, of a matter wherein it ought not to hold, should at this time be reckoned a thing contrary to the Queens Regality, more than dealing in any Ecclesiastical cause, should be in any temporal Court at* Westminster? *for no Statute of provision or* præmunire, *assigneth these for causes; which have indeed, grown since by collections, whilst the Popes usurpation was continued in the Land. Against which oftentimes, the Remedy by prohibition could not serve the turn.* Cosen Apol. par. 3. ch. 7. p. 87.

But admit the worst, let there be a disparity allowed, let the failing be on the Ecclesiastical Judges side, yet still he is the Kings Ecclesiastical Judge;

and

And there is a favour alwayes on a Judges ſide, ſo far as to preſume, That he is fit to Act in what he is appointed to; and that he does Act according to what he is beſt informed of, by his skill, and from his conſcience. *Sacrilegii inſtar eſt dubitare an is Dignus ſit, quem Imperator elegerit*; That perſons merit and integrity is not to be doubted of, whom his Princes will has appointed to any publick Office and Employment, ſay the Emperors *Grat. Valent. & Theod. in Leg. Tertia. C. de crimine Sacrilegii.* Now it is not to be rationally ſuppoſed, that any one exerciſing the Office of a Judge, will deſignedly and purpoſely hold Plea of ſuch a cauſe, which he either knows to be, or is propounded to him as, belonging to Temporal cognizance: But it may ſo happen, that by nearneſs and coherence of one cauſe with another, that which indeed is a Temporal, may be ſuppoſed to be an Eccleſiaſtical cauſe; and if an Eccleſiaſtical Judge, minding to do his duty, as the nature of *his office doth require, do yet by reſemblance, and near coherence of one cauſe with another, proceed in that which is Temporal, ſhall this preſently caſt him under a* Præmunire? That is, ſhall the exceeding ſome bounds and limits that the Prince (under whom he exerciſes Juriſdiction) has preſcribed to him, bring him under ſuch puniſhments, as the very enemies and underminers of his State are to endure? This certainly were very harſh and rigorous. I know nothing more to be declined, than ſuch an Office, where the exerciſe of it puts a man into that tickliſh and tottering condition, That he is ready every day (without that exact circumſpection, as is morally impoſſible, for the carefulleſt man alive alwayes to have) to fall into the greateſt penalties and dangers.

It has been ſaid, That a corrivality betwixt the Eccleſiaſtical and common Lawyer, has ſtill made the one ſeek his own elevation, by the depreſſion of the other: But here, the common Lawyer has got an inſuperable advantage over the other; for let him but hold to this Opinion, and by his Authority make it good, That the bare holding Plea of a Temporal cauſe in an Eccleſiaſtical Court, makes liable to the penalties of *Præmunire*, and the conteſt is at end: There will then be few, that will care to ſtudy the Eccleſiaſtical Laws; fewer, that will dare to execute any Eccleſiaſtical Juriſdiction.

A grave and ſober perſon delivers his mind touching this matter, with a great deal of ingenuous freedom and truth: *Hoc Auſterum ſupplicium* (ſpeaking of *Præmunire*) *aliqui Juriſperiti noſtri, Lucri & Ambitionis æſtu accenſi, verborum, quæ in uno Statuto, obſervant generalitatem, ad quemvis levem Judicum lapſum, præſertim Eccleſiaſticorum, nimis violenter extendunt, ſed hic eorum candorem deſideramus, aliquorum etiam inſcitiam lugemus.* Dr. Cowell Inſtit. de Publicis Judiciis. Sect. 43.

King *James*, a wiſe and diſcerning Prince, eaſily diſcovered the Grievances that this profeſſion laboured under, and was pleaſed earneſtly to concern himſelf in redreſſing of them. This great King ſpeaking of the uſefulneſs of the Civil and Canon Law among His own Subjects in matters of Pyracy, Wills, Marriages, and things of like nature, proceeds thus—*And this Law has been ſo much encroached upon, ſithence my coming to the Crown, and ſo had in contempt, that young men are diſcouraged from ſtudying it, and the reſt weary of their lives that do profeſs it, and would be glad to ſeek any other craft* *.

*craft**. And ſome pages after in the ſame ſpeech, when He comes to give His particular charge to the Judges, he has theſe words, *What greater miſery can there be to the Law, than contempt of the Law; and what readier way to contempt, then when queſtions come, what ſhall be determined in this Court, and what in that? whereupon two Evils do ariſe, the one, that men come not now to Courts of Juſtice to hear matters of right pleaded, and Decrees given accordingly: But only out of a curioſity to hear queſtions of the Juriſdictions of Courts diſputed, and to ſee the event, which Court is like to prevail above the other; and the other evil that does ariſe, is this, That Plea's are turned from Court to Court, in an endleſs circular motion, as upon* Ixions *wheel; and this was the reaſon why I found juſt fault with that multitude of prohibitions:* And then having given a notable inſtance relating to what He had before ſpoken of in the concern of Eccleſiaſtical cauſes, and their being turn'd off, and toſſed from Court to Court, He gives this direction to the Judges—*Therefore the only way to avoid this, is, for you to keep your own bounds, and nouriſh not the people in contempt of other* Courts, *but teach them Reverence to Courts, in your publick Speeches, both in your Benches, and in your* Circuits: Such was the rare providence of that wiſe King, to keep up the Eſteem of the Eccleſiaſtical Courts; and with fair countenance, and good encouragement, to cheriſh the Profeſſors of the Eccleſiaſtical Laws; for the Eccleſiaſtical Laws are ſuch, that, as Himſelf is pleaſed to teſtifie in another place of the ſame Speech, *in many caſes cannot be wanting in his Kingdom*: Not permitting any encroachments to be made thereon; much leſs, that the Profeſſors and Judges thereof

* K. *James*'s Speech in the Star-Chamber to the Judges, about the 14*th* year of His Reign.

ſhould be terrified at every turn, and awed with the heavieſt pœnal inflictions, upon the leaſt irregular motion, and undue proceeding; eſpecially ſince other milder, yet as effectual means are provided to rectifie ſuch irregularities, and reduce them to the right courſe again.

For the wiſdom of our Princes, has by expreſs proviſion of Law, ſo well ordered both Juriſdictions, that as both flow from them, ſo both ſhall be kept (to prevent confuſion in either) within their proper bounds; and therefore if the Eccleſiaſtical Judge intermeddles with any thing that appertains not to his Juriſdiction, the ſame Royal Hand that gave forth other things to him, reſtrains him in that. And thus by Writs of Prohibition, the Eccleſiaſtical Judge is ſtopped from proceeding in that which is reſerved for another Tribunal. And if it were not thus, to what end would Prohibitions ſerve? wherefore were they invented? why ſhould ſo ſolemn a proceeding be, before they are granted? why ſo long debating and conſulting, before they ceaſe and loſe their force? Laſtly, why not laid aſide as ſuperfluous and needleſs things, after *Præmunire* was eſtabliſhed?

In the third year of King *James*, certain Articles of Complaint were Exhibited by Archbiſhop *Bancroft*, before the Kings Majeſty, and His moſt Honourable Privy Council, touching Abuſes in granting Prohibitions. The matter mainly canvaſſed betwixt the Judges of both Juriſdictions, was, touching the right ſtating and ſetling the reaſons and grounds of granting Prohibitions: All along which conteſt, there is not any the leaſt mention made of Prohibitions granted with reſpect to the perſons

who

who were impleaded, but only on the Account of the incompetency of the matter or cauſe which they were impleaded upon; whereas it is acknowledged on both ſides, that where a matter truly appertaining to the Temporal Juriſdiction, is brought into Plea before the Eccleſiaſtical Judge, there any further proceeding in the ſame, is, and ought to be reſtrained by the Writ of Prohibition; but it is not ſaid at all, that the penalty of *Præmunire* is incurred thereby.

And here let me entreat the Reader to fix his eye and underſtanding a little more intenſely upon that which now follows: In the twenty fifth and laſt of thoſe Articles, it is thus ſet down *: —*Whereas for the better preſerving of His Majeſties two Supreme Juriſdictions before mentioned, viz. the Eccleſiaſtical and the Temporal; that the one might not uſurp upon the other, two means heretofore have been of ancient time ordained, that is to ſay, the cenſure of Excommunication, and the Writ of Prohibition; the one to reſtrain the encroachment of the Temporal Juriſdiction upon the Eccleſiaſtical, the other of the Eccleſiaſtical upon the Temporal: We moſt humbly deſire your Lordſhips, that by your means, the Judges may be induced to reſolve us, why Excommunications may not as freely be put in ure for the preſervation of the Juriſdiction Eccleſiaſtical, as Prohibitions are under pretence to defend the Temporal, eſpecially againſt ſuch contentious perſons, as do wittingly and willingly, upon falſe and frivolous ſuggeſtions, to the delay of Juſtice, vexation of the Subjects, and great ſcandal of Eccleſiaſtical Juriſdiction, daily procure, without fear either of God or men, ſuch undue Prohibitions as we have heretofore mentioned.*

* *Vid.* Sir *Ed. Coke*, ſecond part of the Inſtitutes of the Laws of *England*, p. 617.

At

At the reading of this Article, I was in great expectation what Anſwer would be given thereto, conſidering that the buſineſs of reſtraining either Juriſdictions encroaching on the other, was thus brought to a ſhort and plain iſſue; for ſo it ſeems, that if either the Eccleſiaſtical Court encroached on the Temporal, or the Temporal Court encroached on the Eccleſiaſtical, the coercive means applyable for the reſtraint of either, were reſpectively theſe two; *viz. the cenſure of Excommunication, and the Writ of Prohibition*; but *Præmunire* is not mentioned at all.

But come we to the Anſwer it ſelf, and therein we find a full and ample conceſſion of all that is ſet down in the Article, and ſo, as it is ſet down there; what the Eccleſiaſtical Judges had deſired to be reſolved in, is granted to them according to the very ſtating thereof propoſed by them; Take the Anſwer in the very words thereof ſet down by the ſame Author——*The Excommunication cannot be gainſaid, neither may the Prohibition be denyed upon ſurmiſe made, that the matter purſued in the Eccleſiaſtical Court, is of Temporal cognizance; but as ſoon as that ſhall appear unto us judicially to be falſe, we grant the conſultation.*

A thrifty improver of Advantages, would find this conceſſion uſeful to him, in making and urging many inferences from thence to ſerve well his purpoſe; but the intelligent Reader cannot but have his thoughts full of them, and I ſhall therefore forbear the propoſing of any; only this I ſay, That by what was ſet down in the Article, and by what is declared in the Anſwer to it, there appears plainly, That *Encroachers* on the Spiritual Juriſdiction, are

as

as ſubject to *Excommunication*, as *Encroachers* on the Temporal Juriſdiction are ſubject to *Prohibitions*. That which my preſent deſign leads me to, is to conclude from hence, That ſince *Prohibitions* are by Law the means of reſtraining any *Encroachments* on the Temporal Juriſdiction, therefore *Præmunire* does not lie in that caſe. And indeed how ſhould it? for is not every Eccleſiaſtical Court, the Kings Eccleſiaſtical Court? and the Laws Eccleſiaſtical, are they not the Kings Eccleſiaſtical Laws? And if in execution of theſe Laws by the Kings Eccleſiaſtical Judges, there ſhould happen any exceeding of due limits in thoſe Courts (as who can ſay of any Court that it never exceeds?) yet *Præmunire* cannot lie thereupon; for, as I may very well apply that which King *James* ſaid (in that Speech of His which I mentioned before) when ſome buſie Sticklers were active and forward in fixing a *Præmunire* upon the Officers of the Chancery) *No* Præmunire, *ſayes He, can be granted, but at the Kings Suit; and how can the King grant a* Præmunire *againſt Himſelf?*

In the Court of Admiralty, many more Prohibitions are brought, than in the Eccleſiaſtical Courts. There is a greater vicinity and likeneſs betwixt the matters tryable in that Court, and thoſe tryable at common Law, and conſequently greater occaſion and probability of miſtaking: Now certainly ſuch frequency of Prohibitions, with the conſequences of them, would be very dilatory and tedious, if the more compendious way of *Præmunire* were effectual; and why not *Præmunire* lie here, as well as in the Court Chriſtian? This is another Court, or a Court under the large meaning of [*Alibi*] proceedings are divers therein from thoſe of the common Law;

and

and I do not remember to have read any *Præmunire* brought for ſuing in the Admiralty, excepting in two caſes, the one 38 *Hen.* 6. the other in 9 *Hen.* 7. *Nevertheleſs*, ſaith Dr. *Zouch*, *although it be ſaid that two* Præmunires *were brought upon ſuch occaſions, yet it doth not appear, that any judgment was given upon them:* See more to this purpoſe, in his Juriſdiction of the Admiralty aſſerted.

But never to mince the matter, Is it not here that the Shooe wrings? It is the Eccleſiaſtical Court, and that is become the great Eye-ſore; a thing that will not be looked upon as an offence in another Court, is beheld by men through a magnifying Glaſs in this: There are too many that cannot away at any hand with a Biſhops Juriſdiction, and what they do not like, they eaſily quarrel at; hence are all the prejudices, that upon very little occaſions are taken up, and yet, though good reaſons be given, are hardly laid down again. The Spiritual Court ſhall be ſure to have all the opprobrious, and all the ſcurrilous imputations faſtned to it. Men love thoſe ſins too dearly, that are puniſhable there; and they love to hold too tenaciouſly thoſe rights from others, that are recoverable there: Now no Delinquent loves that Judge who corrects him for the ſin he loves to continue in; or will force from him the rights of others, which he has no mind to part withall. I wiſh it have not been from theſe, or any other ſuch grounds, that the Eccleſiaſtical Juriſdiction has had ſo many oppoſites; *and that there has been ſuch lying at catch, and waiting for advantages againſt it*, ſo as to terrifie with the name of *Præmunire*, whenſoever men have a mind to ſay there is (or that there is indeed) ſome real miſcarriage therein.

Thus

Thus far I have enlarged, in making good the ſecond Propoſition; I ſhall collect together under one view, what has been delivered thereon. It was not the matter of any civil contract, but a cauſe indiſputably of Eccleſiaſtical cognizance, that was the ground of theſe proceedings, and therefore no *Præmunire* imputable on that Accompt; and admitting the contract had been the ground of theſe proceedings, yet for the reaſons before ſhewed, no *Præmunire* could have been incurr'd hereby; and therefore the Biſhop of *Waterford*'s Juriſdiction in the caſe before laid down, was legally founded in reſpect of the cauſe proceeded upon.

PROP. III. The Biſhops Juriſdiction was legally managed in this cauſe, againſt theſe perſons, in reſpect of the manner obſerved and followed therein. It was in favour to the Mayor and Sheriffs, that a civil intimation was given to them from the Biſhop, deſiring their meeting with him. This civil intimation was (I will not ſay deſpiſed) but not anſwered with a correſpondent civility in them; for they did not give the meeting to the Biſhop, which he deſired they would. And yet the end of this deſired meeting, was in order to a fair accompting for Moneys received by them for the Churches uſe, and for making good the reparation of the Body of the Cathedral Church: They not giving (I ſay) the Biſhop this deſired meeting, ſome competent time afterwards (I think a weeks ſpace intervening) Proceſs was cauſed to iſſue forth, to call them to appear before the Biſhop in his Conſiſtory, on a certain day after following.

I cannot go forward to the sequele of this proceeding thus begun, without making some little animadversion on these persons (I shall forbear giving it any worse term) disingenuous carriage, in their *Petition of Complaint Exhibited to the Lord Deputy and Council*: In the first Section of which, they say, *That they the Petitioners about Ten of the Clock in the Forenoon, on the twentieth of* July *last, received a Verbal Summons from the Apparator of the Diocess of* Waterford, *to Appear at the Consistory Court of the said Diocess, before the Lord Bishop of* Waterford *at Two of the clock the same day*———

The disingenuity that I observe herein, is most notorious; for first, they speak of a *Verbal Summons* from an Apparator; than which, nothing can be more ridiculous (shall I say) or more false. 'Tis both contrary to practice for any *Verbal Summons* to be given, by an Apparator to any person; and it is of no force, nor validity, if any such were given; and it is contrary to Truth, that any such was given. The Bishop of *Waterford* better understands both what is the ordinary practice, and what will hold good, and is justifiable in practice; than to order his Apparator, to call any of his Diocess before him, (without a formal Process) by *Verbal Summons* only:

Next, it is said, *That this Verbal Summons was given at Ten of the clock in the Forenoon, to appear at Two of the clock in the Afternoon of the same day.* Here is disingenuity again: There being no Accord betwixt what is thus alledged, and the Acts of Court that have been expedited in this proceeding; I have made it my endeavour carefully to consult these, and find, that an Original Citation issued out of the Registry

giſtry againſt theſe perſons, to appear on *Wedneſday*, the 22d of *July*, betwixt the hours of Eight and Ten in the Forenoon of the ſame day: And I find, that this Citation was executed on the perſons of theſe men, by one *Michael Curren*, the uſual Mandatary of the Court (according as he declared upon Oath) on the 21 day of the Month of *July*, which was *Tueſday*. This is the firſt Act of proceedings in this cauſe, and if we will credit that (as it is atteſted by the Regiſter, a Sworn Officer, and Notary Publick) then the firſt Section of the Petition, as it relates to theſe proceedings, contains nothing of Truth in it.

And as little there is in the firſt part of the ſecond Section; for, whereas the Petitioners ſay, *That on the Two and twentieth of the ſaid Month, they were Summoned to Appear at Ten of the clock, at the ſaid Court the ſame day.* — The falſity of this appears plainly, by what the aforeſaid Mandatary upon Oath declared, namely, That he had Summoned them on the *Tueſday*; which *Tueſday*, was the One and twentieth, not the Two and twentieth of *July*. And the ground of complaint had been tolerable indeed, if the time of their Summoning, and time of their Appearance had jump't together at one and the ſame hour.

I now go on further, in drawing out the courſe and ſeries of this Judicial proceeding. The day being come, that is to ſay, *Wedneſday* the 22d of *July*, at which time the forementioned Proceſs was returnable, and the Biſhop ſitting in his Conſiſtory, the perſons Summoned were called upon, who not Appearing, their Contumacy was accordingly accuſed, and upon the Accuſation, by Decree of Court, they were pronounced contumacious.

The Legality of this manner of proceeding thus far, is sufficiently known by common practice; and *Lindwood* gives this Rule (*Constitut. Provincial. Item omnes: de Judiciis. ad literam F*) *ubi aliquis apprehensus est personali citatione, si sic citatus personaliter non compareat efficitur verè contumax.* And the 70th Canon of the Church of *Ireland*, *allows a Contumacy to be affixed to that person who neglects to appear upon citation.*

I have heard, that there was afterwards something alledged on their behalf, why they could not appear upon that Summons; and something they say in the second Section of their Petition to this purpose: *As, that a Council of the City had been appointed against that time to consult about an Answer to a Letter sent by the Lord Deputy.* But two things come here into observation, whence it seems probable, that this matter was made use of at a pinch, and so to serve as a little evasive shift, when there was nothing else that could seemingly help them; for as they mentioned in the first Section of their Petition, this Letter was delivered to them from the Lord Deputy the *Monday* before, now the answering of that, would not, I suppose, be delayed until *Wednesday*; and that very hour of *Wednesday*, when upon due Summons before personally served, they were to appear at the Bishops Consistory. But, indeed, it is more then to be presumed, that the appointment of their Council (if any such were appointed) then upon *Wednesday*, and at that hour was designed as a colour wherewith they might be helped to elude their appearance upon the said Summons.

More-

Moreover, had they been really engaged in so necessary and earnest a business, yet that could give no hindrance; but they might have sent some creditable person to make *Affidavit* of their being so employed, which thing, in all probability, would have caused a respiting of their Appearance at that time: *Yes, but they did send a Messenger* (sayes the Petition) *who acquainted the Bishop with the reason of their not appearing:* But if any such Messenger were sent, he stood there *incognito*, and was as a Mute in the company; for no one did, nor offered to make *Affidavit* thereof.

Add further, *Wednesday morning at Ten of the clock was the time they were called to appear at* (sayes the very Petition it self) but the tenor of the Citation, is betwixt the hours of Eight and Ten; They were busie at Ten of the Clock to dispatch their return, yet the Post is usually gone at that time. They were not busie at Eight, or between Eight and Nine, and then too, their Appearance had been good. What shall we think hereof? Truly by all that I can conceive hereof, there could be no sufficient Allegation grounded hereon, to free them from being in contempt for Non-appearance upon Legal Summons.

But allow they had been really aggrieved by this proceeding, and that there being declared contumacious, had been illegal, Remedy there was for this; a regular course might have been taken, which if applied to, would have given redress herein: An Appeal to the Archbishop of the Province, would have done both these. This the Bishop would not, nay, could not deny them: And if the ground of their Appeal were justifiable, they would by that

means

means have been reſcued from the Biſhops, and protected under the Archbiſhops, Juriſdiction. This courſe, I have been told, was ſuggeſted to them; but the Truth is, it reliſhed too much of condeſcention, to give any ſhew of ſubmiſſion to Eccleſiaſtical power: High ſpirits will rather want, than be beholden for, help, to that hand which they do not like of. Perhaps theſe perſons, lifted up with an Opinion of their Office, as they thought themſelves a degree above the being proceeded againſt by a Biſhop, ſo it would be beneath them, to ſupplicate for any relief from an Archbiſhop.

Well, upon this, a ſecond Proceſs iſſues out, to call them to Appear, and ſhew cauſe, if they had any, why for their former contempt, they ought not to undergo the penalty of a cenſure. Upon this Summons they appear, yet not alledging any material, or rationally concluſive Plea, for purging their former contempt, they are upon the accompt thereof enjoyned an eaſie penance: This only; to make an acknowledgment of their contempt and diſobedience, and to promiſe future Obedience.

The Heats before conceived in theſe mens breaſts, and hitherto ſuppreſſed, now break out with ſome violence: They fume and chafe at this impoſition, and diſdain, That Men in their Dignity, being the Kings Lieutenants (ſo they ſtiled themſelves) ſhould be brought to make a publick acknowledgment and ſubmiſſion.

I am verily perſwaded, that if any reaſonable application had been made to the Biſhop by theſe perſons, and ſome private acknowledgment and ſubmiſſion tendred, an eaſie compoſure of what had paſſed, would have followed: But the doing of this

was

was ſo far from their Reſolves, that a friendly advice, and propoſal thereof, was with ſcorn rejected. The time appointed for making this Acknowledgment comes; and as it came, ſo it paſſed away without any obſervance of what was enjoyned.

This repeated contempt might have diſordered a well compoſed temper, but it had no power upon the Biſhop; alter him a little it might (how could it well be otherwiſe) but not ſo as to exaſperate that ſpirit of Lenity, which (as he ought, ſo) he alwayes moderated himſelf by, in matters of cenſures, and other parts of corrective Diſcipline. It directed him indeed to reflect on the Authority he was inveſted withall, and how ſcandalouſly it was deſpiſed; and that the Rod was to be taken in hand, and ſomething at leaſt to be done in a way of correction, that men might not be diſobedient and refractory, and then think they had done well in being ſo; Authority contemned, and paſſing with impunity, uſhers in both Atheiſm and confuſion.

Wherefore that more ſevere and dreadful cenſure of Excommunication being laid aſide, it may be (as for other reaſons) ſo upon this conſideration likewiſe, that they might not be diſcapacitated in the execution of their Offices. This great cenſure, I ſay, being laid aſide, another is made uſe of, that with ingenuous Chriſtians might probably attain the end intended, being tempered with more mildueſs and lenity. The cenſure was this: *The perſons ſo offending were ſuſpended* ab ingreſſu in Eccleſiam, *till ſuch time as they had made publick ſatisfaction for the ſcandal given, by their contempt and diſobedience.*

If

If it should be here said, That the censure of suspension *ab ingressu in Ecclesiam* (though it be a milder censure far than the other) was improperly inflicted in this case, because Excommunication is the pœnal coercion appropriated to this crime of contempt; and if that contempt were really so scandalous, and notorious, why was not the penalty inflicted, *pro rata culpæ?* Besides, there is seldom mention of this kind of censure, but in one case, and that set down in the Statute Law, *viz. 6 Edvard. sexti. cap.* 4. imposed on such as are Brawlers in Churches and Church-yards; but of Excommunication it is said—*Aliarum censurarum Ecclesiasticarum una*, viz. *Excommunicatio infligitur pro contumacia sola, vel non comparendo in judicio, vel non parendo mandatis Ecclesiæ. Dr.* Cosen. Polit. Eccles. Anglic. Tab. 5. A. Which being so, and not applied in the case where it ought, thence the proceedings in this cause become irregular and illegal.

To all this it may be returned, first, That lenity is there unhappily placed, where they that have benefit by it, would turn it to the prejudice of those that bestow it. Besides, Admit that the censure of Excommunication might justly have been inflicted in this case, on these persons (which most certainly might have been) yet the not imposing that, does not vitiate the proceedings, and make them become irregular and illegal; for this suspension is a kind of Excommunication: and although by the Statute, it seem peculiarly appropriated to the crime of *brawling and quarrelling in Church, or Church-yards*; yet that, I conceive, is to be understood in this sense, That no other censure shall be inflicted upon that crime, but the same censure may be inflicted on other

other crimes beſides, and ſo conſequently on this, which it was inflicted on here. Suſpenſion I ſaid was a kind of Excommunication, ſome call it *Minor Excommunicatio* (*Cowell, word. Suſpenſion*) it is a degree below that which is uſually called by that name; for a man being deprived of a liberty of coming to Church, he is thereby deprived of all publick communion with the reſt of Gods faithful people, in partaking of the Word and Sacraments, and all other divine Offices. It is called by ſome *Interdictio divinorum illata in perſonas*, to diſtinguiſh from that which is the interdiction of a place. *Zouch. de Jure Eccleſiaſtico.* part. 2. ſect. 8.

There are two things wherein this cenſure of Suſpenſion differs from Excommunication properly ſo called (I ſpeak here only as to things *in foro externo*, in reſpect of outward practice and proceeding thereupon) 1. Becauſe the Secular Arm cannot be implored, or called upon for it. 2. Becauſe it does not render a perſon, on whom it was impoſed, ſo incapable in ſundry reſpects of Secular matters, as the other does. Nor indeed does the Rule laid down before, ſo preciſely bind the Eccleſiaſtical Judge to a literal obſervance of it, that no other cenſure in ſuch a caſe may be uſed inſtead thereof: But it is within the latitude of his Authority, That if there be hopes of attaining the ends of this greater cenſure (as the reducing of refractory and contumacious perſons) by inflicting the leſſer: And if there be a concurrency of other peculiar reſpects, beſides inducing the Judge to uſe that leſſer, then ſurely the greater may be abſtained from, and the courſe and manner of proceedings, ſtill be good and juſtifiable.

I have been the longer in removing this Objection that might be made againſt the Biſhops proceedings, as to the manner of them, in this particular; becauſe I have heard ſomething debated touching the ſame, and I have had ſome doubtings thereof in my ſelf; but as this cenſure was (I verily believe) with great deliberation, and prudent reſolve inflicted by the Biſhop; ſo I am now fully ſatisfied therewith, both in reſpect of the nature of it, and manner of proceeding to the inflicting of it.

For the coming of things to this head (we muſt know) was not precipitous, and hudled up all on a ſudden; five ſeveral Court-dayes were employed in this Tranſaction: betwixt every of which, fair and competent intervals of time were allowed; although, I muſt needs ſay, conſidering all circumſtances, leſſer time might have ſerved, Canonically enough, to diſpatch a matter of as great concernment as this*: But the Biſhop reſolved (I ſuppoſe) to move circumſpectly and deliberatively in what he Decreed, and therefore took time enough for it; and he deſired, that they whom he had to deal withall, would be tractable, regular and adviſed, in what they ought to have done, and ſo he gave them time enough likewiſe.

So then, to the inflicting this cenſure was this matter brought. The paſſing of which, the publication of it in the forementioned Cathedral, at due time, and in due manner. The particular intimation thereof given to the perſons themſelves, the grave admontion following to obey the ſame, and retract their former contempts and refractorineſs. All theſe notwithſtanding, the Mayor and Sheriffs the next *Sunday* following come to Church in an unwonted,

* In the Iſle of *Man*, the Eccleſiaſtical Judge makes much ſhorter work; *In hac inſula Judex Eccleſiaſticus, citat, & fi it, & infra octo Dies parent, aut carceri intruduntur.* Lord *Coke*, 4 Part. Inſtit. c. 69.

unwonted, ſtrange and tumultuous manner, attended with a confuſed and numerous Rabble of ſuch as had not uſed to viſit the Church at all; nor would then have done it, but that they were countenanced, nay, commanded, indeed t attend the Kings Sword (ſuch a phraſe they uſed) but ſuch a concourſe, proved a diſorderly and heady meeting together.

Thus was the Church cenſure contemn'd, baffl'd, trampled upon. Thus was Epiſcopal power expoſed to deriſion and mockery. Thus was the Kings Authority in His Eccleſiaſtical Juriſdiction, debaſed and made vile, by thoſe that gave themſelves out to be the great upholders of it, in matters of civil Juriſdiction; and after all, to make a ſhew of innocency in this whole proceeding, they ſpeed in all haſte to complain firſt, and would have it thought an argument of their being injuriouſly dealt withall (ſo deſtitute were they of any other) becauſe they have got the ſtart, and cry out loudeſt that they are ſo. They repreſent themſelves as perſons (above any example) the moſt unjuſtly dealt withall, and aggrieved, *by ſtrange, arbitrary, and unheard of proceedings*. Their Addreſs was made to His Majeſties moſt Honourable Privy Council in this Kingdom, there they Exhibit their Complaint, thence they expect relief: The Biſhop owns the Kings Authority whereſoever, and in whomſoever it is repreſented, but eſpecially in that High and moſt Honourable Aſſembly; and ſo ſubmits himſelf and proceedings to the determination, that by their Lordſhips ſhould be made thereof.

I muſt not omit that to make ſure work, beſides this Addreſs, the pretending Complainants, become

Appellants; for they interpoſe an Appeal *in ſcriptis*, from the Biſhop, immediately to the King; that if one courſe they had taken failed, the other, at leaſt might be helpful to them. I cannot paſs by (although I do but touch at them) the many Errors concurring in this latter Eſſay: As that firſt the time of Appealing, from that which they pretended themſelves aggrieved with, was lapſed, when this Appeal was interpoſed. Moreover, that one and the ſame cauſe, by the ſame perſons, at the ſame time, was thus brought to tryal before two diſtinct Judicatories, which is vexatious, at leaſt, in thoſe that procure the ſame to be done ſo.

That the intermediate Juriſdiction was paſſed by, contrary to the ancient liberties and cuſtoms in ſuch caſes obſerved; and which was among other matters digeſted into Articles and Chapters, confirmed in the Parliament held at *Clarendon*, in the Reign of King *Henry* 2d, *Anno Domini* 1164. namely, *That all Appeals in* England *muſt proceed regularly, from the Archdeacon to the Biſhop, from the Biſhop to the Archbiſhop; and if the Archbiſhop failed to do juſtice, the laſt complaint muſt be to the King to give order for redreſs; that is* (*ſayes my Lord Primate* Bramhall, *Vindication of the Church of* England, *p.* 75.) *by fit Delegates.* See to this purpoſe, *The Statute of Appeals*, 24 *Hen.* 8. *cap.* 12. And this contrary to the 56 *Canon* of this Church, *Whereby the pain of Nullity is inflicted on all Acts, which are ſped in Appeals, where the Juriſdiction intermediate is paſſed by*; for although it is true, That the Kings Authority ought not to be diſputed, or diſobeyed by any Subject, where it does appear to be; yet that muſt ever be eſteemed *a true and regular obedience*, which the King

King himſelf by Law has preſcribed, it ſhould be.

And laſtly, ſuppoſing the Appeal entred by them to have been antecedently good, that is, good in reſpect of time and manner obſerved in interpoſing the ſame; yet it is not good nor valid in its conſequents, becauſe the time appointed for theſe pretended Appellants to receive their *Apoſtles* (that is, *dimiſſory Letters* from the Biſhop or Judge *Aquo*, intimating his deferring and yielding to the ſaid Appeal, and aſſigning of time for proſecution of the ſame) is long ſince paſſed away without doing either: And beſides this ſlipping the *Terminus Hominis*, that is, the Term limited and appointed by the Judge, from whom the Appeal is. Moreover, the *primum fatale juris*, for proſecuting and ending of Appeals, is likewiſe lapſed; and no impediment can be warrantably alledged in favour, and on behalf of the Appellants, ſo as to enjoy benefit of reſtitution into, and being allowed their *ſecundum fatale*, or ſecond year for proſecuting their former Appeal.

No impediment, I ſay, can warrantably be alledged by theſe Appellants, to capacitate them for this reſtitution; for although the matter, and pretended Grievance complained of againſt the Biſhop (at the hearing thereof) before the moſt Honourable Council, was referred to two Honourable Members of the ſame; and in the iſſue thereof, from thoſe Honourable Referrees ſomething like the nature of a compromiſe was made between both parties (which might ſeem ſufficient to ſtop the running on of theſe *Fatalia Juris*) namely, in reſpect of the Complainants, their engaging to perform what belonged to them.

them to do; and had been required from them by the Biſhop, as, to give account of the Money received for the Churches uſe, and making good the Reparation of the Body of the Cathedral, and other particular matters before mentioned, and in reſpect of the Biſhop his promiſing to withdraw his proceedings againſt them thereupon: Although, I ſay, this ſeeming compromiſe might appear as a ſufficient ground of granting admiſſion to the *ſecundum fatale*, ſuppoſing the firſt to be irrecoverably paſt: Nevertheleſs it is not at all ſufficient thereto; the reaſon is, becauſe conditions were not performed on which this reſpite, and ſeeming compromiſe was grounded, and this non-performance of conditions was on the Appellants own part. The Biſhop performed more than his part in deſiſting hitherto from any further proceeding againſt them: And they not performing the conditions required on their parts, not then, nor ſince, nor to this very day (which yet they ought to have done forthwith) the benefit therefore of the other *fatale* is not allowable to them; but being uncapable of any reſtitution thereunto, they are really in the *lapſe*, and the ſaid Appeal, may be pronounced *pro deſertâ*, and no advantage on the Appellants part to be expected therefrom: And if the Biſhop ſhould thus pronounce, and reſume into his cognizance the whole proceeding again, as there would be both Law and Right enough to juſtifie his ſo doing; ſo there would be a want of both theſe, and of every thing elſe, that might be needful to make up a ſafe and warrantable defence for the Complainants. It is a noted and approved Maxim in pœnal proceedings, *That Contempts of all crimes are leaſt capable of favour or lenity.*

Upon

Upon the whole view, it ſufficiently appears how little of truth or reaſon this exception againſt the manner of proceedings, has to bear its ſelf up withall. Look we upon the crimes cenſured, they were deeply ſcandalous and provoking. Look we upon the cenſure inflicted, 'twas comparatively to the crime, and a greater cenſure that might have been inflicted, moderate and eaſie. Look we to the manner of proceeding, it was proper, and without the omiſſion of any one requiſite or formality that of right ought to be uſed therein. Look we to the Order obſerved, It was not looſe and confuſed, but grave and regular. Look we upon the whole cognizance it ſelf, This was not haſty and precipitous, but prudentially guided, and proceeding with good maturity and deliberation; convenient intervals of time dividing ſeaſonably every Court throughout the whole Tranſaction, and preventing any thing of ſurprize that might be ſuſpected therein. I pretend not much skill to theſe Affairs; yet being upon the deſign of ſearching (as well as I was able) into the whole ſtate of this matter, I have viewed and reviewed the whole *ſeries* of theſe proceedings, with the ſeveral Acts of Court, Decrees, and other matters incident thereunto: And according to the beſt of what I am able to judge, I cannot find in the ſame, where to faſten any Error, no not in the very niceties and punctualities of practice, much leſs in any material point, and eſſential matter thereof.

And now after all, If Offenders complaints againſt the forms and preſcriptions of Courts, may paſs for juſt Exceptions, and fair Vindications of themſelves, we ſhall have many crimes, but few criminals; many that will be bold to offend, but few that will ever acknowledge

acknowledge their being legally convicted for their Offences: 'Tis high time for persons invested with judiciary power, to look about them, and provide some new wayes of securing the Authority of their judicial proceedings, if every bold attempt to question the legality of them, may pass for a justifiable Plea of not obeying them, or imprint a nullity upon them. When such Offenders, so justly and mildly censured, shall dare openly, to tell my Lord, the Kings Deputy, and my Lords of His Majesties Council (as these men did) That a Bishop, the Kings principal *Ecclesiastical Judge*, within his own Diocess, has put the Inhabitants of a City into very much disorder *by such arbitrary, and unheard of manner of proceedings* (when all the disorder proceeded from themselves, and no other, but legal proceedings have been used herein) this comes very near the saying, That they are wronged in spight of any thing that can be said against it; and that if they to whom they make their Application, will not believe and redress them (as they would have it themselves) they will venture to speak as hardly of them too: They will commit faults, and then complain, and be pettish and froward, if they be not stroak't and soothed up in their complaints. He that charges any in subordinate power, with *arbitrariness* of proceedings, and may escape so, will at the next turn charge as bad upon those that are in superiour Authority, if he have but any matter of concern then at stake, and may think to be secure when he does so.

This begins in the Ecclesiastical Courts, but will it end there? it's to be feared, it will not. Success, impunity and hopes of being countenanced therein, will

will embolden ſuch men to go further, even to pronounce the like upon all judiciary proceedings in Civil Courts, where their perſons or intereſts are concerned, and where they may be heard with freedom and ſafety of popular approbation; it might paſs, for a pretty ſmooth contrivance, for a Criminal to avoid the force of a judiciary ſentence, by firſt traducing it, and to get free from the Obligation of ſubmitting to what is decreed, by affirming confidently, and ſtanding to it, *That the proceedings were illegal, and therefore not to be obeyed.* If this would ſerve the turn, who would be ſuch a Fool, as ever to be guilty? or ſo careleſs of his own eaſe, as ever to undergo any puniſhment? But 'tis worth the wonder of a ſober man, to think that any one ſhould ſhew himſelf (and believe others ought to think him) ſerious herein. But in truth, what has preceded, ſo much out-does this, that all our wonder may be well ſpent upon it. That men called to anſwer in Law, ſhould queſtion the known and approved courſe and proceedings thereof, carries ſomething extraordinary with it; but here is much more, That they themſelves ſhould againſt Law ſo plainly fore-judge their own cauſe, and their own perſons, as to exempt, both, from what, and to confine them to what Juriſdiction, they themſelves beſt liked of.

The Enquiry into the abſurdity, unreaſonableneſs and ill conſequences of which, and the evincing the Right of Epiſcopal Juriſdiction in the caſes in hand, againſt any ſuch illegal pretenſions and attempts: The putting a new mound about that ancient, and eſtabliſhed Juriſdiction, which every pragmatical, pettiſh, and conceited Noveliſt is now ſeeking either

by detraction in his ſpeech, or other crafty Machinations in his practice, firſt to retrench a little, and by and by utterly to aboliſh; has hitherto employed my Thoughts, and my Pen. In proſecution of which deſign (it is now no more than time, I ſhould tell the Reader ſo much) I have promiſcuouſly made uſe of Engliſh Statutes, ſince the time of King *Henry* the ſeventh, and ſome memorable paſſages of Eccleſiaſtical Juriſdiction done in *England*, as well, as what peculiarly relates to this Kingdom. And I cannot altogether deny, but that I have done this for the Nonce; for (ſetting aſide ſome particular Statutes, relating to the peculiar ſtate and condition of this Kingdom) As to Eccleſiaſtical Juriſdiction, we here conform in the practice and exerciſe of it, and in the Rules and Laws it is exerciſed by, to the ſame, that are uſed in *England*. If I be blamed for this, I protect my ſelf with what a Learned perſon has collected from Sir *John Davys* Reports, in Caſe *de commendam—Ex quibus conſtat Hibernos ſeſe accomodare, non ad jura Anglicana tantum, ſed ad Leges Cæſareas etiam, & jus Canonicum quatenus ea inter Leges Anglicanas admittuntur.* Dr. *Luck*, de Authoritate Juris Civilis. in Regno Hiberniæ, *Sect* 8. To whom I may add the Authority of that greatly Learned Prelate, Primate *Uſher*; for to this Chapter of the ſaid Book, as he did to all the reſt, he gave his particular Atteſtation under his own hand. I mentioned at firſt two ends, which I propoſed to my ſelf in this undertaking; theſe I have had all along in my eye: The one was, that by the beſt reaſon I had, and was able to improve, and by the beſt authority I could find, and was able to produce, I might juſtifie the Right; (and in the preſent caſe the right

right proceedings) of Ecclesiastical Jurisdiction, and so give my self a true satisfaction therein: The other end is, to give a satisfaction to others also; for what concerns my self, I have sufficiently attained it; for what concerns others, I have at least endeavoured to do something in Order thereto.

FINIS.

Some miſtakings or omiſſions in Pointing, the intelligent Reader may eaſily obſerve and correct; And that he may pleaſe to do the like in ſuch Lapſes, as are either Literal, or tend to vitiate the Senſe, they are here in one view ſet down before him.

ERRATA.

PAge 17, line 7, for Juriſdictions, read Juriſdiction: *ibid.* line 8, for cognizances, read cognizance: page 24, margent, line 2, for *Statutis* read *Statute:* page 25, line 29, for in, read is: *ibid.* line 32, for *pœnes* read *penes: ibid.* line 34, for *ſine*, read *ſive:* page 26, line 4, for *vir*, read *viz. ibid.* line 8, for *tali*, read *rati: ibid.* line 27, for *ſanctis*, read *ſanctio:* page 29, margent, Sect. 2, for amplytude, read amplitude: page 30, margent, line 32, for withou, read without: page 32, line 16, inſtead of propper cauſe, read a proper cauſe: page 34, line 13, for *Clerii*, read *Cleri:* page 41, line 20, for *Regie*, read *Regiæ: ibid.* line 32, for *Prerogativa*, read *Prærogativa:* page 44, line 34, for Kimg, read King: page 56, line 26, for beee, read been: page 68, line 15, for cognizanced, read cognizance: page 73, line 12, for powers, read power: page 82, line 4, for has, read had: page 103, line 26, for *diverſi*, read *diverſæ.*

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FINIS.